2007-00146

This publication is not intended as a substitute for the legislation. Reference should be made directly to the Line Fences Act and its regulations, where necessary. These can be found at www.e-laws.gov.on.ca.

This advisory Guide provides information to municipalities and fence-viewers and may not account for particular or local facts or circumstances. Accordingly, this Guide should not be relied upon as a substitute for legal or professional advice, and the user is responsible for how the Guide is used or applied.

The Ministry of Municipal Affairs and Housing wishes to acknowledge the support of Brian Donaldson in providing technical expertise and assistance in completing this Guide.

Ministry of Municipal Affairs and Housing
ISBN 0-7794-9996-4(Print)
ISBN 0-7794-9997-2 (PDF)
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1.5M/ 02/06

Disponible en français.

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Part One: Introduction

This part provides a brief summary of the purpose of the Act and explains the limitations on its use.

Purpose of the Act

The purpose of the Line Fences Act is to provide a procedure for the resolution of line fence disputes between the owners of adjoining properties. Line fences are fences that mark the boundary between properties; they are often referred to as boundary or division fences as well. The Act does not deal with disputes about fences that are not on a boundary line.

This Guide deals only with the arbitration of fencing disputes in those parts of Ontario that are organized for municipal purposes, where the arbitration of fencing disputes is a responsibility of local municipalities. Owners of adjoining properties who are unable to reach agreement about a line fence may apply to their local municipality to have the dispute arbitrated by three fence-viewers who are appointed by the municipal council.

In those parts of Ontario that are not organized for municipal purposes, the arbitration of fencing disputes is the responsibility of the Ministry of Municipal Affairs and Housing. Information about the procedure in unorganized territory may be obtained from the Ministry's offices in Sudbury and Thunder Bay or by reviewing Regulation 716, which can be found with the Line Fences Act at www.e-laws.gov.on.ca.

When is the Act Applicable?

The arbitration procedure is applicable to two situations where the owners are unable to reach agreement:

- where no line fence currently exists, and one owner wants a new fence to be constructed to mark the boundary between the two properties; or
- where a line fence already exists, and one owner wants it to be reconstructed or repaired.

The decision of the fence-viewers, which is known as an "award", can deal with one or both of the following issues in such situations:

- the apportionment of responsibility for the fencing work between the two adjoining owners; or
- the description of the fence, including the materials to be used, that is to be constructed or reconstructed on the boundary line.

When is the Act Not Applicable?

The arbitration procedure is not applicable if one owner, on his or her own initiative, has constructed a new line fence or has reconstructed or repaired an entire existing line fence, and then wants to use the arbitration procedure to force the adjoining owner to be part of the cost of the completed work.

It is also important to note that the arbitration procedure deals only with disputes about fences: it does not provide a means of determining the location of the boundary line between adjoining properties. Such disputes have to be resolved by the owners themselves, and municipalities and their fence-viewers have no jurisdiction

to deal with this matter. As many municipal staff members and fence-viewers are aware, property owners involved in a boundary dispute often approach the municipality in the hope that the matter can be resolved without the need for them to obtain legal advice and a survey. (This issue is discussed in more detail in both Parts Two and Three.)

Informal Resolution of Disputes

Although many property owners approach their local municipality about line fence matters, they are usually able to reach agreement with their neighbour without the need for a formal viewing by the fence-viewers. An informal discussion between a municipal staff member or one of the fence-viewers and the adjoining owners can often help to resolve a dispute, especially where the owners are not on good terms. In addition, owners normally become more willing to resolve their dispute themselves once they are made aware that they will be required to pay for a viewing and its related costs

Purpose of the Guide

In most municipalities, fence-viewers do not conduct viewings frequently. As a result, both they and the municipal staff members involved in the arbitration procedure are often uncertain about the various procedures that must be followed under the Act. It is impossible to catalogue every possible situation in a document of this type. Nonetheless, it is hoped that the information will prove helpful.

Who Owns a Line Fence?

The question of ownership of a line fence is often raised. The Line Fences Act does not deal with this issue. By contrast, section 10 of the Forestry Act says that a tree on the boundary line between two properties is the common property of the two owners. This is consistent with the general rule that objects located on a property boundary are normally jointly owned. In the case of a fence, however, it may also be necessary to look at the specific circumstances, such as who constructed the fence and who currently maintains it, before determining who is the owner. These are questions that are often raised by owners and their witnesses when fence-viewers are called in to conduct a viewing.

References to the Municipal Clerk

The term "clerk" has, in most cases, been used throughout this Guide when referring to the administration of the arbitration procedure. This has been done because the Act itself assigns this responsibility to the "clerk of the local municipality". It is recognized, however, that this responsibility can be delegated and that, in many municipalities, it is someone other than the clerk who administers the procedure. As a result, all references to the "clerk" in this Guide should be interpreted broadly to include every municipal staff member to whom responsibility for part or all of the administration of the arbitration procedure has been assigned.

Part Two: Five Basic Questions

This part is intended primarily for the municipal clerk and other municipal staff members who are involved in the administration of the arbitration procedure and also, to a lesser extent, for council members. It provides answers to five key questions.

Question 1: What is Council's Role?

Members of local councils should be aware that fence-viewers are performing a type of judicial function and that the council has no authority to provide instructions to fence-viewers or to review their decisions. The Act itself provides an appeal procedure and councils have no role in this regard. Local councils do, however, have a number of important roles and responsibilities under the Act, which are described below. (Councils of upper-tier municipalities have no role under the Act.)

Appointing Fence-Viewers (Section 2 of the Act)

A council is required to appoint fence-viewers. It cannot tell an owner that the municipality has no fence-viewers and that it is, therefore, impossible for a fencing dispute to be arbitrated.

Setting the Remuneration of Fence-Viewers (Section 2 of the Act)

A council is also required to establish the remuneration to be paid to its fence-viewers, which may be an hourly or daily rate, or a rate for each time that they are called out.

Prohibiting Proceedings during the Winter (Subsection 5(2) of the Act)

A council may ban proceedings requiring the attendance of the fence-viewers for all or part of the period between the 1st of November of one year and the 31st of March of the next year.

Establishing Administrative Fees (Section 17 of the Act)

A council may establish reasonable administrative fees to be paid to the municipality by the two owners involved in an arbitration. The fees can reflect the municipality's actual costs in arranging a viewing, or they can be in the form of a flat fee. Section 17 refers to prescribed maximum fees: this was included in the Act because of a concern that some municipalities might set their administrative fees at a very high level to discourage applications from owners. This has not occurred to date and, as a result, no regulation has been made to limit administrative fees.

Delegating the Clerk's Responsibilities (Subsection 4(2) et al of the Act)

Although the Act makes the clerk responsible for the administration of the arbitration procedure, it permits a council to designate another person for the purpose of giving certain notices. Subsection 228(4) of the Municipal Act, 2001 provides another option: it authorizes the clerk to delegate, in writing, any of his or her powers and duties under any Act to any person, other than a member of council. This provision permits another staff member, such as the chief building official, to be made responsible for the administration of the entire arbitration procedure.

Non-Application of the Act (Section 26)

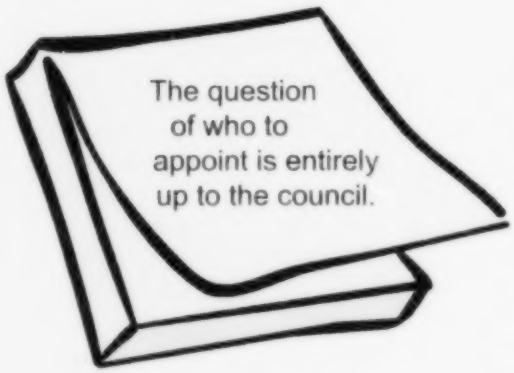
Sections 11 and 98 of the Municipal Act, 2001 permit a council to exempt part or all of the municipality from the Line Fences Act and, instead, to pass a bylaw apportioning the costs of line fences between adjoining

owners. If this occurs, the Line Fences Act, other than section 20, does not apply to the area that is subject to the bylaw. It is important to note that a council cannot exempt itself from section 20 of the Line Fences Act, which sets out the fencing responsibilities of owners of former rail lines.

Question 2: Who should be Appointed as Fence-Viewers?

Type of Individuals

This was a somewhat simpler issue when there was a greater distinction between rural and urban areas. Rural municipalities tended to appoint individuals with a farm background and urban municipalities tended to appoint those with a background in construction. As society evolves, however, it becomes increasingly important that councils appoint fence-viewers who, collectively, are broadly representative of the various groups who live in that community.



Number of Fence-Viewers

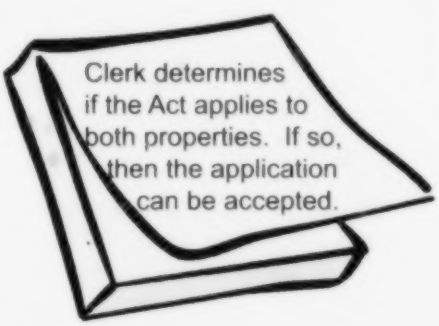
The Act requires three fence-viewers to be present at a viewing. It is, however, advisable for a council to appoint more than three fence-viewers so that the clerk can exercise discretion in assigning fence-viewers to each viewing without being accused of bias in favour of one of the two owners. For example, a fence-viewer who is a relative or friend of one of the owners should not be involved in arbitrating that dispute. If a municipality includes both rural and urban areas, it is also advisable that the roster of fence-viewers reflect this fact to permit the clerk to assign the appropriate fence-viewers to each viewing.

Timing of the Appointments

Many municipalities appoint their fence-viewers, along with their other appointees, at the beginning of each year, whereas others appoint them at the start of each term of office or even for an indefinite period. Section 2 of the Act is silent on this point, thereby leaving the matter to each council. If a municipality has not had an application for a viewing for many years, its council may decide to wait until an application is received before appointing fence-viewers. The difficulty with this approach is that a viewing has to be held not later than 30 days from the date of receipt of an application, which does not leave much time for a council to make the appointments.

Eligibility to Serve as Fence-Viewers

The Act is also silent as to who can serve as a fence-viewer. There is no requirement that a fence-viewer be a resident or elector of the municipality or even a Canadian citizen. It is entirely up to each council. The question often arises as to whether council members can be appointed to serve as fence-viewers. The answer is clearly yes, but it is probably not advisable, given the many other demands on the time of council members. Some councils have appointed a roster of fence-viewers composed partly or even entirely of municipal staff members. The one situation in which it would be inappropriate for a staff member to be involved in a viewing is where the municipality itself is one of the adjoining owners, which happens occasionally. Municipalities that rarely receive an application for a viewing might wish to consider appointing the fence-viewers of a neighbouring municipality to serve their municipality as well, should it be required.



Question 3: When is the Act Applicable?

Let's assume, for the purpose of dealing with this important issue, that the owners (not the tenants) of two adjoining properties have been unable to reach agreement on the sharing of the costs of a line fence or on the type of line fence that is to be constructed. One owner has applied for a viewing by submitting a completed Form 1, Request for Fence-Viewers, to the clerk. The clerk must then deal with a number of issues before agreeing to proceed with a viewing.

Is the Act Applicable to Both Properties?

Is the Act applicable, for example, if the applicant owns a residential property or agricultural property and the adjoining property is:

- ***another residential or agricultural property?*** The Act is clearly applicable in this situation.

- ***a municipally-owned property, other than a highway?*** The Act is applicable in this situation because subsection 23 (1) says the Act applies to lands owned by municipalities and local boards as defined in the Municipal Affairs Act, including conservation authorities.

- ***a municipal highway, other than an unopened road allowance?*** The Act is not applicable in this situation, because subsection 25 (1) says that the Act does not apply to a public highway, which includes a highway under municipal jurisdiction. Although the clerk must reject an application for a viewing in this case, subsection 25 (2) authorizes the municipality to enter into an agreement with the adjoining owner for a fence to mark the lateral boundary of the highway.

- ***an unopened road allowance?*** (i.e. one laid out by Crown surveyors) The Act is applicable to this situation, according to section 9, provided that the Act also applies to the property on the other side of the road allowance, and provided that the council gives its approval to a viewing. In this situation, the fence-viewers are required to divide the allowance equally between the two owners. Their award does not confer any title upon the owners or interfere with the municipality's rights. (Section 68 of the Municipal Act, 2001 enables a municipality to require the removal of any fence enclosing part or all of an unopened road allowance.)

- ***a public school?*** The Act is applicable to this situation because the definition of "local board" in the Municipal Affairs Act includes a school board. Paragraph 34 of subsection 171 (1) of the Education Act permits a school board to "erect and maintain any wall or fence considered necessary by the board for enclosure of the school premises". If a board is not prepared to bear the entire cost of such a fence, a municipality may proceed with a viewing.

- ***a provincially-owned property, other than a highway?*** The Act is applicable to this situation, according to section 24, except for unpatented Crown lands, i.e. lands "that at no time have been disposed of by the Crown by letters patent, deed or otherwise". (Unpatented Crown lands are managed by the Ministry of Natural Resources under the Public Lands Act.) For provincially-owned lands, other than unpatented Crown lands, a municipality may proceed with a viewing. subsection 24(3) says, however, that a fence-viewers' award cannot make the province responsible for more than half of the cost of the work on a fence.

- ***a provincial highway?*** As noted above, subsection 25(1) says that the Act is not applicable to a public highway, which includes a highway under provincial jurisdiction. The clerk must therefore reject an application for a viewing in this situation. The Ministry of Transportation (MTO) has its own fencing policies for different classes of highways, and owners of adjoining properties should contact MTO directly.

- ***a federally-owned property?*** The Act is not applicable to federally-owned lands because the Government of Canada is not subject to provincial legislation. The clerk must therefore reject an application for a viewing in this situation. Owners of adjoining properties should contact the relevant federal department or agency directly.

- ***an Indian Reserve?*** Indian Reserves are owned by the Government of Canada in trust for First Nations. As a result, the Act is not applicable to a reserve and the clerk must therefore reject an application for a viewing in this situation.

- ***a railway corridor?*** The clerk should reject an application for a viewing if one of the adjoining properties is part of a railway corridor. There are two types of corridor:

    - Lines used for railway purposes - the fencing of most active rail lines is governed by the Railway Safety Act, which permits Canada to make regulations dealing with the prevention or restriction of access to rail lines. As of May 2005, no such regulations have been made. The Railway Safety Act replaced the historic Railway Act, which required railway companies to build and maintain fences along their rail lines.

    - Former rail lines - the fencing of former, i.e. "abandoned" rail lines that have been sold in their entire width to a new owner is governed by section 20 of the Line Fences Act. If a former rail line is sold to one of the adjoining owners, the new owner becomes responsible for the fences between his or her lands and the lands of the other adjoining owner for ten years. If, however, a former rail line is sold to a person, including the province or a municipality, who is not an adjoining owner, the new owner becomes responsible for the fences on both sides of the former rail line in perpetuity.

Is the Boundary Line between the Two Properties in Dispute?

The clerk's second task in responding to an application for a viewing is to determine whether there is agreement about the boundary line between the two properties. This is the reason why Form 1* requires an owner applying for a viewing to confirm that the boundary line is not in dispute. If there is a genuine dispute about the boundary line, the clerk must reject the application. A municipality cannot determine the location of the boundary between two properties. This is a civil matter.

Who Determines whether the Boundary is in Dispute?

This is the responsibility of the clerk, and it can be a difficult decision. The easiest situation is one where an owner who is applying for a viewing admits that the dispute is really about the boundary line rather than the fence. But, in some cases, one of the owners may simply be claiming a boundary dispute in order to prevent a viewing from being held. In such situations, the clerk should require the owner to provide some evidence, such as a survey, that conflicts with the survey of the adjoining owner.

If in doubt, the clerk can take a cautious approach by rejecting the application for a viewing; alternatively, if not convinced that the alleged boundary dispute is genuine, the clerk can permit the viewing to proceed in order to give the fence-viewers an opportunity to examine the situation. If the fence-viewers decide to make an award in such circumstances, the owner who claims that the boundary is in dispute will then have an opportunity to appeal it.

What if an Existing Fence is Not on the Surveyed Boundary?

Many line fences, especially in rural areas, are not located on the surveyed boundary line. If neither owner objects to the location of the fence, it is not the responsibility of the municipality to worry about whether or not there is a boundary dispute. In such cases, the clerk may proceed with a viewing.

*A copy of all forms referred in the guide have been reproduced for reference purposes only and can be found in Part 8 of this document.

Question 4: When do Fence-Viewers have Jurisdiction?

Let's assume that the clerk has now determined that the Line Fences Act applies to both properties, and the boundary line between the properties is not in dispute.

The next task of the clerk, before agreeing to schedule a viewing, is to look at the particular circumstances of the case. This can be a difficult issue, and future problems can often be avoided if the clerk requests more detailed information from the owner who is applying for a viewing.

It is important to remember that it is the clerk's responsibility to determine whether the fence-viewers have jurisdiction to arbitrate, i.e. to make an "award", based on the specific circumstances.

Let's again look at some examples.

What if there is no line fence in place?

This is a straightforward situation because section 4 of the Act makes it clear that the fence-viewers have jurisdiction in these circumstances.

What if an entire line fence needs to be repaired or reconstructed?

This is also a straightforward situation because section 4 makes it clear that the fence-viewers have jurisdiction in these circumstances as well.

What if one owner has already constructed a new fence?

As noted in Part One, this is also a straightforward situation. Fence-viewers have no jurisdiction to arbitrate a dispute if one owner has already constructed a line fence; in such circumstances, the dispute is between the two owners, and the clerk must therefore reject the application.

Sometimes an owner will attempt to use the provisions of the Act to intimidate the adjoining owner into paying half the cost of a fence that has already been constructed. What happens more frequently is that an owner, after constructing a new fence on the basis of a verbal agreement with the adjoining owner, will apply to the municipality for a viewing when that owner refuses to honour the agreement. In such cases, the aggrieved owner should apply to the Small Claims Court rather than to the municipality, which has no jurisdiction over the matter.

What if one owner has already begun to construct a new fence?

This is a somewhat trickier situation, especially if the dispute is about the type of fence that is to be constructed. Some clerks refuse to proceed with a viewing if any construction work has been done, whereas others take a more flexible position. If the work that has been done on a fence is sufficiently advanced that it would dictate the type of fence that is to be built, it would seem reasonable for the clerk to decide that the fence-viewers have no jurisdiction and to reject the application for a viewing. If, on the other hand, the work is of a more minor nature, it would seem reasonable for the clerk to permit the viewing to proceed.

What if one owner has already repaired or reconstructed an existing line fence in its entirety?

This is the same as the situation where one owner has already constructed a new fence before applying to the municipality for a viewing. In such circumstances, the fence-viewers have no jurisdiction to arbitrate and the clerk must therefore reject the application.

What if one owner has repaired or reconstructed half of a line fence?

This is quite different from the situation described above. What often happens, especially in agricultural areas, is that two adjoining owners have an informal agreement that each will maintain half of their common line fence.

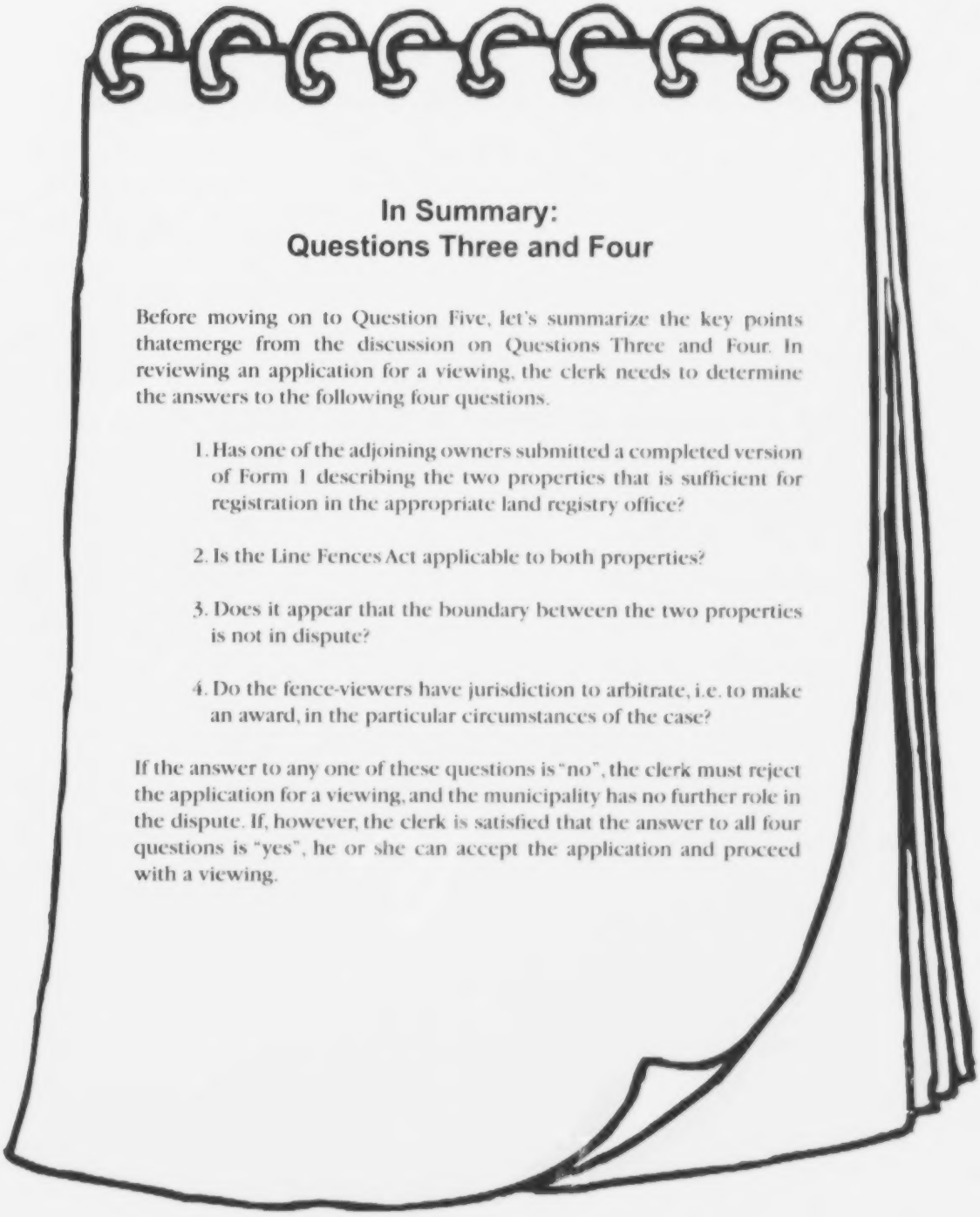
When the fence needs to be repaired or reconstructed, one owner does his or her share of the work, while the other fails to do his or her share. In such a situation, only the half of the fence that has not been repaired or reconstructed is the subject of the dispute between the owners, and the fence-viewers have jurisdiction to arbitrate in these circumstances.

What if one owner wants to replace an adequate line fence with a different type of fence?

This is another difficult situation. In an urban setting, an owner who installs a swimming pool in his or her backyard may be required by the municipality's fencing bylaw to construct a different type of fence. In an agricultural setting, an owner with a specialized type of livestock operation may also require a different type of fence.

Let's assume that the owner who needs the new fence wants to construct it on the property boundary in place of the current line fence, which is in good condition. When the adjoining owner refuses to agree to share the cost of the replacement fence, that owner applies to the municipality for a viewing.

Some people are of the opinion that the fence-viewers have no jurisdiction to arbitrate in these circumstances because there is already an adequate line fence between the two properties. On the other hand, subsection 4 (1) permits an owner to apply to have an existing line fence "reconstructed", which could be interpreted as including the replacement of an existing fence. So it appears that a reasonable case can be made that the fence-viewers do have jurisdiction to arbitrate in such circumstances. If fence-viewers are required to make an award in this unusual type of situation, they will have to decide how the cost of the work is to be apportioned between the two owners. This issue is discussed in Part Four.



In Summary: Questions Three and Four

Before moving on to Question Five, let's summarize the key points thatemerge from the discussion on Questions Three and Four. In reviewing an application for a viewing, the clerk needs to determine the answers to the following four questions.

1. Has one of the adjoining owners submitted a completed version of Form 1 describing the two properties that is sufficient for registration in the appropriate land registry office?

2. Is the Line Fences Act applicable to both properties?

3. Does it appear that the boundary between the two properties is not in dispute?

4. Do the fence-viewers have jurisdiction to arbitrate, i.e. to make an award, in the particular circumstances of the case?

If the answer to any one of these questions is "no", the clerk must reject the application for a viewing, and the municipality has no further role in the dispute. If, however, the clerk is satisfied that the answer to all four questions is "yes", he or she can accept the application and proceed with a viewing.

Question 5: What are the Responsibilities of the Clerk?

The Clerk has a number of roles and responsibilities in connection with viewings. Many of these are required by the Act: others, however, are optional and some of the following comments are, therefore, intended only as suggestions. (The clerk has a number of other responsibilities as well, such as sending out copies of the award, which are described later in this Guide.)

To Encourage the Owners to Settle their Dispute Informally

Before scheduling a viewing, it is highly desirable, although not mandatory, that the clerk or another staff member talk to both owners, as most fencing disputes can be settled without the need for a formal viewing. In many cases, an owner who approaches the municipality about a fencing dispute is not on speaking terms with the adjoining owner, and having a neutral party serve as a mediator by discussing the issues with both owners can often lead to a resolution of their dispute. It is particularly important that the owners be made aware that if the municipality's fence-viewers conduct a viewing, there are going to be costs to both of them for the work on the fence itself and the costs of the proceedings.

To Ensure that Form 1 is Filled Out

As noted earlier, subsection 4 (1) makes the use of Form 1 mandatory, and the clerk should make every effort to ensure that it is filled out completely and accurately. Although it is not mandatory, the clerk would also be well-advised to ensure that a copy of the completed Form 1 is provided to the other adjoining owner. There are a number of advantages to this exercise:

- An accurate description of the two properties is essential for the formal notices sent by the clerk to both owners (Form 2) and to the fence-viewers (Form 3); it is also essential for the award (Form 4);
- Form 1 includes wording that requires an owner who applies for arbitration to certify that the boundary line between the two properties is not in dispute; and
- Providing a copy of the completed Form 1 to the other owner makes it clear who is applying for the arbitration; it may also encourage both owners to resolve their dispute without the need for a formal viewing.

To Provide Copies of Relevant Material

It is important that the clerk provide the fence-viewers with all documents that are relevant to the viewing. These include:

- any fencing bylaws in force in the municipality, because the description of the fence in their award has to conform to such by laws;
- the notice that was sent to the owners (Form 2) together with proof of service, in case one of the owners questions the validity of the notice; and
- the wording necessary to administer an oath, in the event that either owner requires the owners and any witnesses to be sworn in.

Some fence-viewers, when conducting a viewing, attempt to persuade the two owners to reach agreement, thereby avoiding the need for them to make a formal award. It may therefore be useful to provide the fence-viewers with a copy of Form 14 which provides for agreements between owners.

It would also be helpful to provide the fence-viewers with a copy of the Statutory Powers Procedure Act, which sets out certain procedural rules that are applicable to the conduct of a viewing by fence-viewers.

To Schedule the Viewing

Subsection 4(2) requires the clerk to set the date and time of the viewing, which is held on the lands of the two adjoining owners. Subsection 4(3) specifies that the date of a viewing must be "not more than thirty days" from the date that Form 1 is submitted to the clerk; this requirement was included to ensure that fencing disputes can be settled expeditiously, especially in the spring when property owners are anxious to undertake fencing work. If, however, the municipality has a bylaw prohibiting proceedings during the winter months, the clerk cannot schedule the viewing until the end of the "prohibited period". In this case, the thirty-day deadline does not apply during the relevant months.

To Arrange for the Attendance of Fence-Viewers

Subsection 4(2) requires three fence-viewers to attend a viewing. If a municipality has appointed more than this number, the clerk is responsible for designating the three that are to attend, using discretion in making this selection. Clerks might wish to consider designating one or more standby fence-viewers as well, who can step into the breach if one of the original three fence-viewers has to withdraw at the last minute.

Having standby officials is a common practice, and it could help avoid the possibility of having to cancel or reschedule a viewing.

If a municipality has not appointed a sufficient number of fence-viewers, the clerk is responsible for advising council of the need to do so. In order to meet the time limits set out in the Act, council might consider appointing staff members, the fence-viewers of an adjacent municipality, or the "citizen" members of one of its committees.

One urban municipality that received its first-ever application for a viewing appointed the members of its committee of adjustment to serve as fence-viewers.

To Send Out Formal Notice of the Viewing

Section 4 requires the clerk to send notices of the viewing to the two owners (Form 2) and to the fence-viewers (Form 3). These notices must be served at least one week before the date of the viewing. Notice to the owners may be given by registered mail or by personal delivery, whereas notice to the fence-viewers must be given by registered mail [see Subsection 4(3)].

To Meet with the Fence-Viewers Before the Viewing

Although this is not mandatory, it is desirable that the clerk hold an informal meeting with the fence-viewers shortly before the date of the viewing. In some cases, it may be useful to include other staff members, such as the chief building official or municipal law enforcement officer. If there are unusual legal issues, the advice of the municipality's solicitor may also be needed.

At such a meeting, the procedures to be followed in conducting a viewing and the particular circumstances of the case should be reviewed with the fence-viewers. The fence-viewers should also be reminded that they cannot proceed with their viewing unless three of them are in attendance.

It is important that the clerk provide the fence-viewers with all documents that are relevant to the viewing.

To Ensure that the Fence-Viewers are Paid

The clerk should also ensure that the fence-viewers receive their fees from the municipality. Subsection 18 (2) says that their fees for a viewing are to be paid when the period for appealing an award expires or, if there is an appeal, after the appeal has been dealt with by the referee or deputy referee.

Subsection 18 (2) also says that if the fence-viewers decide not to make an award or if they have to re-attend for the purposes of enforcing an award, their fees are to be paid by the municipality when they have submitted a certificate of default under subsection 12 (4) or subsection13 (7), a determination with directions under subsection13 (9), or a decision not to make an award under section 14. Enforcement issues are described in Part Six.

Copies of referenced forms are included in Part Eight. These contain notes which it is hoped will be helpful to clerks and other municipal staff members who are involved in the arbitration procedure.

Part Three: Conduct of a Viewing

Part Three is directed primarily at fence-viewers, although the first and last topics will also be of interest to the clerk. It deals with:

- postponing a viewing
- procedural issues at a viewing
- hearing evidence
- keeping a record
- preparing the award
- sending out copies of the award.

It is intended to provide a number of practical suggestions, based on issues and situations that have been raised over the years. It is not intended as legal advice. Municipalities should consult their own solicitor if legal advice is needed.

In conducting a viewing, it is essential that the fence-viewers be open to the evidence that they see and hear. They should not prejudge the outcome of the viewing or give the owners any indication that their minds are already made up. It is also essential that the fence-viewers be aware that the conduct of their viewing is subject to the provisions of the Statutory Powers Procedure Act. This statute establishes procedural rules that are relevant to a viewing, e.g., that each owner is entitled to be represented by counsel or an agent, to call and examine witnesses, and to conduct cross-examinations of the witnesses of the other owner. This legislation can be found at www.e-laws.gov.on.ca.

Postponing a Viewing

There are a number of circumstances in which viewings have to be postponed and rescheduled at a later date, including the following.

Weather or Ground Conditions

Subsection 5(1) of the Act indicates that the clerk can postpone a viewing if "weather conditions or ground conditions make it impracticable" for the fence-viewers to conduct a viewing. In this event, the clerk is required to:

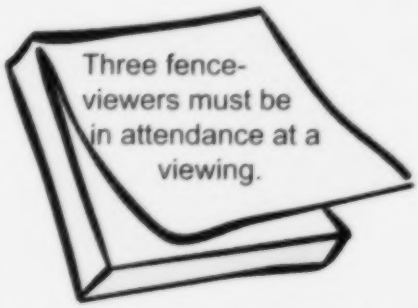
- notify the owners and fence-viewers immediately, preferably by telephone or e-mail;
- set a new date for the viewing, which can be no more than fifteen days after the original date of the viewing; and
- provide notice of the new date to the owners (Form 2) and fence-viewers (Form 3) in exactly the same manner as the previous notice.

Viewings Prohibited during the Winter

Subsection 5 (2) permits viewings to be banned during the winter months in areas where snow conditions make it impracticable for them to be held. A local council may pass a bylaw stating that no viewing (or other proceeding) is to be held between the 1st day of November and the 31st day of March of the following year, or

during a shorter period between those dates. This means that if one owner applies for a viewing just before or during the "prohibited period", the viewing has to be postponed until the expiry of the period.

Fewer than Three Fence-Viewers Attend



It is mandatory that there be three fence-viewers in attendance at a viewing. Occasionally, one of the fence-viewers may be called away the night before a scheduled viewing to deal with, for example, a family emergency, leaving no opportunity to notify the clerk. Alternatively, one of the fence-viewers may be taken ill on the morning of a viewing. Whatever the reason, the result is that fewer than three fence-viewers are in attendance at the viewing.

If this happens, the fence-viewers that are in attendance at the time scheduled for the viewing have no alternative other than to postpone the viewing and to notify both owners and the clerk of this fact. It is then the responsibility of the clerk to set a new date and to provide new notices to the owners and fence-viewers in Forms 2 and 3. Although the Act does not set a deadline in this case, the clerk should attempt to reschedule the viewing within fifteen days of the original date.

If a viewing has to be postponed because there are fewer than three fence-viewers in attendance, the municipality cannot charge the costs of the proceedings to the owners. The municipality has to absorb these costs in this situation.

Procedural Issues at a Viewing

A number of awkward situations can arise at a viewing which may be disconcerting to fence-viewers, especially if they are not called out often. The following are situations that occur with some frequency.

Only One Owner is in Attendance

If one of the owners (usually the one who did not apply for the viewing) does not attend, there is no need for the fence-viewers to stop the proceedings. The notice sent to both owners (Form 2) states that the viewing may proceed in the absence of any one owner. Owners will sometimes deny that they have, in fact, been notified, which is why it is important that the fence-viewers have copies of Form 2 with them at the viewing, as well as evidence of how the notice was served.

In this situation, it may be useful for the fence-viewers to knock on the door of the absent owner, even though this is not required by the Act, to advise that owner that the viewing is about to commence.

The only circumstance in which the fence-viewers might wish to consider adjourning the viewing is if they learn that the absent owner has been away from home for some time and could, therefore, not have received notice of the viewing.

One Owner Disputes the Boundary Line

As noted earlier, an owner who applies for a viewing is required to certify on Form 1 that the boundary line is not in dispute. This issue may, however, be raised for the first time by the other wner during the viewing, in which case the fence-viewers have to make a judgement as to whether there is a legitimate boundary issue or whether the owner is simply being mischievous to disrupt the viewing. The fence-viewers should require the owner in question to provide some evidence, such as a survey, to back up his or her claim of a boundary dispute. In the absence of such evidence, they should proceed with the viewing.

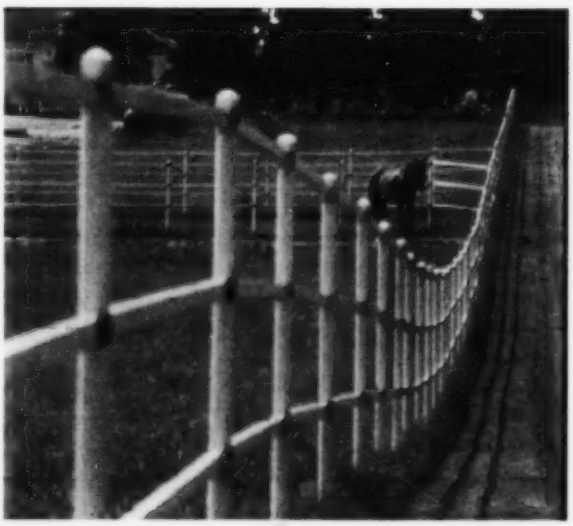
If it appears that there may be some basis to the claim, the fence-viewers have two options: the first is to proceed with the viewing, and to put the onus on the unhappy owner to appeal their award on the basis of the boundary issue. This option has the advantage of moving the procedure forward.

If the fence-viewers are satisfied that there is reasonable evidence of a boundary dispute, the second option is to adjourn the viewing until the boundary issue can be sorted out, after which the viewing can be rescheduled.

Part or All of the Fence has been Constructed

Let's assume that the fence-viewers find that one owner has already constructed the line fence. This can sometimes occur where the dispute is about the type of fence that is to be built, and one owner takes pre-emptive action prior to the viewing. As noted earlier, fence-viewers have no jurisdiction to arbitrate in a situation where the work has been completed. In this case, the fence-viewers have no choice but to adjourn and to make no award. The same rule applies if the fence-viewers find that one owner has already completed the repair or reconstruction of an existing line fence in its entirety.

If, however, the fence-viewers find that only part of the necessary work on a new line fence has been completed, they have to decide whether they can proceed. If, as noted earlier, the dispute focuses on the type of fence and one owner has done sufficient work to predetermine the type of fence that is to be built, it would seem reasonable for them to adjourn the viewing. If, on the other hand, the amount of work done is quite minor, it would seem reasonable for them to proceed.



The Owners Do Not Want an Award

Fence-viewers sometimes arrive for a viewing only to be advised by the two owners that they do not want the viewing to proceed. This can occur where the owners have, for example, agreed:

- on the division of responsibility for the fence;
- that they no longer want a line fence; or
- that they have a boundary dispute that needs to be resolved.

In these three situations, the fence-viewers have no option other than to adjourn the viewing. Subsection 14(1) requires them to use Form 13 to explain why they cannot make an award, and to allocate the costs of the proceedings to the two owners.

Hearing Evidence at a Viewing

The ideal situation is one in which both owners attend the viewing, present their evidence in a reasonable and concise manner, and treat each other and the fence-viewers with respect. The reality can be very different if the two owners are not on good terms. The following are some practical suggestions which are intended to help minimize problems. As noted earlier, fence-viewers should remember that the provisions of the Statutory Powers Procedure Act are applicable to the hearing of evidence by fence-viewers.

Hear the Owners Together

Ideally, each owner should have an opportunity to present his or her evidence, with the other owner being able to listen to that evidence and to respond to it. The fence-viewers should attempt to ensure that both

owners are able to present their respective positions, even if it means that some of the information presented becomes repetitive. The fence-viewers should also avoid getting into a debate or disagreement with either owner about the information being presented or giving any indication that they have already made up their minds on the issues that are being arbitrated.

If this is Not Possible, Treat the Owners Equally

The above approach is not feasible if, as happens frequently, one owner does not attend the viewing. In this situation, the fence-viewers should listen to the evidence presented by the owner who is in attendance. If the other owner has still not made an appearance at that point, the fence-viewers can terminate the viewing and return to the municipal office to consider their award.

Many fence-viewers, however, attempt to provide an opportunity for the absent owner to participate, for example, by knocking on his or her front door and, if that owner is at home, by listening to whatever evidence the owner is prepared to provide. If this practice is followed, fence-viewers should ensure that both owners are treated equally. For example, once they have listened to the evidence of the absent owner, they should not return for another discussion with the other owner or, accept that owner's invitation to remain for a coffee before heading back to the municipal office.

Hearing Evidence from Witnesses

Section 7 says that both owners are entitled to call witnesses to provide evidence. This can be very helpful at a viewing, especially if the adjoining owners are new to the area and their witnesses are long-time residents. The evidence of such witnesses can help to clarify the history of a fence, including which owner was responsible for which portion. Section 7 also says that either owner may require the fence-viewers to hear evidence and examine the owners and their witnesses under oath. As a result, the material that is provided by the clerk to the fence-viewers should include the wording necessary to administer an oath.

Other Practical Matters

Fence-viewers should consider their own personal safety when conducting a viewing. For this reason, they should conduct their fence-viewings on the side of the fence line that belongs to the owner who applied for the viewing, unless the other owner invites them onto the other's property. There have been instances of violent behaviour at fence-viewings. If there is a possibility of such behaviour, the fence-viewers are entitled to have a police officer accompany them.

Fence-viewers should also exercise patience in listening to the evidence of the owners and their witnesses. In some cases, this evidence can become both lengthy and repetitive. The difficulty for fence-viewers is that any attempt on their part to bring matters to a close can lead to accusations by one or both of the owners that the viewing has not been conducted in a fair manner. Fence-viewers should, therefore, permit both owners and their witnesses to tell their stories as fully as possible, even if this results in a longer viewing.

Keeping a Record

Although it is not absolutely essential for the fence-viewers to prepare formal notes on each viewing, it is a recommended practice, and the clerk might wish to provide forms for this purpose. Such notes can be helpful to the fence-viewers in preparing the award or if they are required to provide evidence at an appeal hearing. It is, therefore, desirable that they prepare a brief written record of each viewing, because memories of what transpired can fade quickly. This can be particularly embarrassing for fence-viewers at an appeal hearing if they have different recollections, for example, about the reasons for their award.

Such notes should include the names of the owners who attended the viewing as well as of any witnesses that they introduced. The major concerns of both owners should be recorded, along with any special factors raised by them or their witnesses, such as the history of the fence in dispute. Any unique circumstances should be

recorded, such as the nature of the terrain, the particular needs of the owners and the nature of other fences in the locality. The reasons for the award should also be recorded, especially if the fence-viewers have varied from the fifty/fifty rule in dividing responsibility for the fence between the two owners. This is particularly important in the event of an appeal, because fence-viewers are not required to provide reasons for their award in Form 4.

Preparing the Award

The fence-viewers do not need to rush into making their decision on the issues that are being arbitrated, especially if the situation is a complex one. In particular, they should avoid giving any verbal indication to the owners at the viewing as to what their decision might be. The owners can be advised that they will receive their decision in due course.

The fence viewers can subsequently meet at the municipal office or other convenient location to discuss their decision to complete form 4. It can be very useful to have the clerk attend this meeting, since the clerk would have a good deal of background information that can be helpful to the fence-viewers in making their decision. The award, however, is a decision to be made by the fence-viewers only.

Ideally, the decision should be unanimous, with the award signed by all three of the fence-viewers who attended the viewing. There are occasions, however, when a unanimous decision is not possible. Subsection 8 (1) provides for this by requiring that an award be signed by only two of the three fence-viewers who attended the viewing. If such a split decision occurs, it is particularly important, in the event of an appeal, that the fence-viewers prepare notes on the reasons for their lack of unanimity in making the award.

Sending out Copies of the Award

Once the award has been completed and signed by at least two of the fence-viewers, the fence-viewers are required by subsection 9 (1) to deposit it in the office of the clerk. The clerk is then responsible for sending certified copies of the award to the two owners and any occupants of the two properties by registered mail. Subsection 9 (3) says that copies of the award are deemed to have been received seven days after they are mailed. This provision is important in terms of the appeal procedure, which is the subject of Part Five.

Registration of an Award

Section 15 provides that an award may be registered by an owner in the local land registry office, in which case it becomes a charge on the land. Section 16 provides that an agreement in writing in Form 14 may also be registered by an owner, with the same effect.

In Summary: Conduct of a Viewing

- Be open to the evidence seen and heard at the viewing.
- Give both owners and their witnesses a full opportunity to present their evidence, even if the information presented is lengthy and repetitive.
- Treat both owners in exactly the same manner.
- If an unusual situation occurs during a viewing, do not hesitate to take a brief break to discuss it among yourselves or by phone, with the clerk.
- If fewer than three of you attend or you find, for whatever reason, that you cannot make an award, adjourn the viewing immediately.
- Do not give a verbal decision at the end of the viewing, wait until you have had an opportunity to prepare your award.
- Make some notes on key elements of the viewing, including the reasons for your award.
- Once you have prepared your award and at least two of you have signed it, deposit it with the clerk, who is responsible for sending certified copies to the owners and occupants of the two adjoining properties.

Part Four: The Fence-Viewers' Award

Part Four deals with the content of the fence-viewers' award, which is made in Form 4 after completion of the viewing. The award is required to provide direction to the two owners on the:

- location of the fence
- description of the fence
- division of responsibility
- starting and completion dates and
- allocation of the costs of the proceedings

Factors to be Considered

Subsections 8(2) and 8(3) require the fence-viewers to take into account the following matters in making their decision:

- ***The needs and wishes of both owners:*** These can include the need for measures to contain various types of agricultural animals, children or dogs, or to provide privacy, sunlight or ventilation to a property.
- ***The nature of the terrain:*** It may be more difficult to construct a fence on one portion of a boundary line because of rock outcroppings.
- ***The benefit to both owners of having a line fence:*** This was added to the Act at the same time as the current appeal procedure was established.
- ***The nature of other fences in the locality:*** This can be particularly relevant in residential areas, where one owner is requesting a fence that is completely out of character with other existing fences.
- ***The fencing bylaws in force in the municipality:*** The award has to conform with any bylaws restricting the height of fences or the use of materials such as barbed wire, and any requirements for fences around swimming pools, dangerous places, or other kinds of land use.
- ***Other factors that they consider relevant:*** This can be any matter raised by one of the owners or by the fence-viewers themselves.

Location of the Fence

If there is no line fence, the fence-viewers are required to specify in their award that the fence is to be located "upon the line between the lands of the adjoining owners", as taken from the description of the lands provided in Form 1. If there is an existing fence that is in need of repair or reconstruction, this issue may not be as clear-cut. Many fences, especially in rural areas, are not located precisely on the boundary line but, if the two owners are content with that location, the fence-viewers should specify that the fence is to remain in its current location. Problems can arise, as was discussed in Part Three, where one of the owners expresses concern at the viewing about the location of the fence, claiming that it is not on the property boundary.

Subsection 8 (4) permits the fence-viewers to specify in their award that a fence is to be located on the land

of one of the owners where, because of the "formation of the ground by reason of streams or other causes", it is impracticable to locate it on the boundary line. The legislation specifies that "such location shall not in any way affect the title to the land". In this situation, subsections 8 (5) and 8 (6) authorize the fence-viewers to employ a surveyor to describe the location of the fence for their award, and the surveyor's fees become part of the costs of the proceedings. This is the only case in which the fence-viewers are authorized to obtain the services of surveyor. In all other cases, they are required to use the description of the lands provided in Form 1 in their award in specifying the location of the fence.

Description of the Fence

The fence-viewers are required to provide a description of the fence in their award. This can be as contentious as the division of the costs of the fence and, in such cases, the fence-viewers should give the matter careful consideration.

The fence-viewers should make their description of the fence as detailed and specific as possible in order to minimize future misunderstandings and conflict. This is particularly important if both owners are being made responsible for a portion of the fence. The lack of detailed provisions in an award can result in ongoing conflict between the two owners. The following items are intended as examples only:

- ***Length:*** If a fence is to be constructed only on certain portions of the boundary line (e.g., in the rear yards of two urban properties), and not on other portions (e.g., through swampy areas or woodlands in rural areas), the exact location (i.e., the precise starting and stopping points of the fence) should be described in the award.

- ***Height:*** This is frequently a source of conflict between owners, especially where one owner wants a much higher fence than the other. The total maximum height, including any decorative materials or barbed wire at the top, should be specified in the award.

- ***Materials:*** If the fence-viewers want to ensure that only new materials are used in the fence, this should be specified in the award.

- ***Posts:*** Matters such as the distance between posts and measures to ensure stability at the end of fences, should be specified in the award.

- ***Special Requirements:*** If the owners are concerned about who gets the "good side" of a fence, this should be dealt with in the award in a manner that is fair and equitable to both of them.

- ***Painting or Staining the Fence:*** If the colour of the paint or stain is an issue between the owners, this should be dealt with in the award.

Division of Responsibility

The fence-viewers are required to determine how the responsibility for constructing, reconstructing or repairing a line fence is to be divided between the two owners. This includes responsibility for the future maintenance of that fence. Traditionally, this has been the most contentious issue for fence-viewers to deal with, as adjoining owners often have views that are diametrically opposed.

• ***No Benefit:*** One owner may claim that he or she does not want or need a fence and that, if one is to be built, the adjoining owner should be made entirely responsible for it. This difference of opinion normally arises when one owner in a rural area has livestock and the adjoining owner does not, or when one owner in an urban area has children or large dogs and the adjoining owner does not.

• ***Cannot Afford:*** One owner may claim that he or she cannot afford to share responsibility for a fence and that, if the adjoining owner is determined that one is to be built, that owner should be made entirely

responsible for it. This argument is sometimes put forward by owners who have just incurred major expenses moving to a new house or by owners who have limited financial resources. It is difficult for fence-viewers, when faced with such claims, to determine whether they have any validity, or whether the owners are putting them forward solely for the purpose of trying to avoid sharing the responsibility for a fence.

So how do the fence-viewers make their decision on this issue?

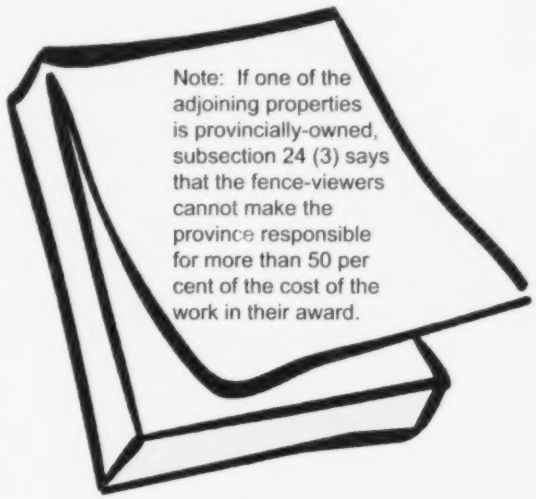
The Fifty/Fifty Rule:

Subsection 8(1) sets out the general rule for the fence-viewers in making their decision. It requires them to make both adjoining owners responsible for half of the line fence between their properties. This rule was established in 1979 as part of a major revision of the Act. It was included in recognition of the fact that this was the longstanding practice in rural Ontario, especially in agricultural areas. Under what is often described as the "right-hand rule", the two adjoining owners would face one another at the centre of their common boundary line, and each would then agree to assume responsibility for the portion of the fence to the person's right.

In implementing this rule, the fence-viewers have two options:

- ***First Option:*** The first is to make each adjoining owner responsible for a "designated one-half of the fence", which is then described in the award. This approach is most appropriate where both owners have the ability to do the work on their own.

- ***Second Option:*** The second option is for the fence-viewers to make the owner who applied for the viewing (Owner A) responsible for the entire line fence, and to make the other owner (Owner B) responsible for reimbursing Owner A for half of the cost of the work, including half of future maintenance costs. This option is most appropriate where Owner A wants the fencing work to be completed as soon as possible. If Owner A has the skills necessary to do the fencing work, the fence-viewers can make Owner A responsible for doing it. If, however, neither Owner A nor Owner B has these skills, the fence-viewers can require the work to be undertaken by a contractor. A common practice, in such cases, is for the fence-viewers to require the owner who wants the work to be completed, i.e. Owner A, to obtain three bids, with the amount of the lowest bid to be divided equally between the two owners.


Note: If one of the adjoining properties is provincially-owned, subsection 24 (3) says that the fence-viewers cannot make the province responsible for more than 50 per cent of the cost of the work in their award.

Varying from the Fifty/Fifty Rule

Subsection 8(1) authorizes fence-viewers to make exceptions to the fifty/fifty rule if, "in the circumstances of the case", they believe that an equal division of responsibility would be "unjust". In that event, they can divide responsibility for a line fence between the two adjoining owners in whatever manner they consider appropriate. So it is essential to remember that the fifty/fifty rule is only the starting point for fence-viewers. They are free to make another type of award if they do not think that it would be just in the particular circumstances.

This is a complex issue because adjoining owners often have very different ideas about what is "just", especially when their own dollars are involved, as do fence-viewers. The following are some examples of hypothetical situations in which fence-viewers might wish to consider varying from the fifty/fifty rule.

- ***One owner needs or wants a more elaborate fence:*** This situation can arise in both rural and urban areas. A farmer may need a fence that is stronger than the standard gauge wire fences that surround other farms in the locality to contain the type of farm animals that are being raised. An urban resident may need a fence that is considerably taller than the simple fences that surround other properties in the locality to contain a pair of very large dogs. If fence-viewers are required to arbitrate in such cases, their award should specify that the more elaborate fence is to be constructed. In such situations, the practice of many fence-viewers is to make both owners responsible for half of the cost of the simpler type of fence that would normally be constructed in that locality. They then vary from the fifty/fifty rule by making the owner who needs the more elaborate fence responsible for all of the additional costs incurred in constructing that type of fence.

- ***One owner has not completed work on half of a common line fence:*** Fence-viewers are sometimes called out to deal with a situation where, for many years, two adjoining owners (A and B) have each accepted responsibility for half of their common line fence. The fence now needs to be reconstructed, but only Owner A has done the necessary work to his or her half; Owner B has done nothing to the other half. As a result, Owner A has applied to the municipality for a viewing. In this event, the fence-viewers are dealing with only half of the line fence, as they have no jurisdiction to deal with the half that has already been reconstructed by Owner A. In such a situation, it might be appropriate for the fence-viewers to vary from the fifty/fifty rule by making Owner B, the defaulting owner, responsible for the entire portion of the fence that needs to be reconstructed. The result of such an award is that both Owner A and Owner B would be made responsible for half of the total line fence between their properties.

- ***One owner wants to replace an adequate line fence:*** This is a variant of the first example and reflects the fact that the use of lands is not static. A farmer who plans to convert to a different type of livestock operation needs a more specialized type of fencing and therefore wants to replace the existing line fence. Similarly, an urban resident who plans to install a back yard swimming pool needs a fence that complies with the municipality's bylaw requirements and therefore also wants to replace the existing line fence. The adjoining owners in both situations have refused to share the cost of replacing the existing fences because both of these fences are suitable to their needs and are in good repair. As a result, the owners who need new fences have each applied to the municipality for a viewing. In this situation, it might be appropriate for fence-viewers to vary from the fifty/fifty rule by making an owner who wants to replace an adequate existing fence responsible for most or even all of the costs of doing so.

- ***One owner is being a nuisance:*** Owners who are not on good terms with an adjoining owner will occasionally use the Act as a means of getting at that neighbour. In one case, an owner asked the fence-viewers to require a fence to be constructed on a property boundary that ran through a private woodlot, even though neither owner wanted a line fence in that location. In another case, an owner asked the fence-viewers to require a fence to be constructed on a property boundary, despite the fact that the adjoining owner had recently constructed a fence just inside that boundary line.

  In such cases, it would seem appropriate for fence-viewers to vary from the fifty/fifty rule by specifying that, if the owner who is being a nuisance insists on such a fence, that owner will be responsible for the entire costs of constructing one. Although the Act does not authorize fence-viewers to refuse to require a fence, an award of this type will often cause the owner who is being a nuisance to let the matter drop.

- ***One owner receives more benefit:*** As noted earlier, this is a very difficult issue for fence-viewers to deal with, as adjoining owners often have very different positions as to which one of them receives more benefit from a line fence. Their positions are usually based on the specific purposes for which the two properties are currently used. If fence-viewers are convinced that, in the particular circumstances, one owner does indeed receive more benefit than the other from having the boundary between their lands marked by a fence, they can vary from the fifty/fifty rule by making that owner responsible for more than half of the cost of the fence.

Before making such a decision, however, fence-viewers should recognize that both owners receive benefit from having their boundary marked by a line fence, regardless of current land uses. Fence-viewers also need to take into account the fact that a new line fence will last for a number of years, which means that they should be extremely careful about basing their award solely on current land uses and ownership, since these can change many times over the lifetime of the fence.

In this context, it is interesting to take note of the Ontario Federation of Agriculture's (OFA) policy, which was adopted by Board resolution in February 1984, and which remains in place. "The OFA believes that both property owners should be awarded a part of the cost of building and maintaining their line fence, regardless of one owner's perceived need for it, but the allocation of cost should be no greater than two-thirds, one-third."

Clause 8 (1) (d) of the act requires the fence-viewers to specify, in their award, both the starting and completion dates of the work. The starting date can be a helpful reminder if the owners are doing the work themselves, instead of hiring a contractor.

It is absolutely essential that the fence-viewers specify the completion date in the award if both owners are being made responsible for doing a portion of the work. If the fence-viewers neglect to do so, the award cannot be enforced in the event that one of the two owners fails to do the work required. In such a situation, an award without a completion date is of no value.

Starting and Completion Dates

Clause 8 (1) (e) requires the fence-viewers to specify, in their award, the costs of arranging and conducting the viewing and how these costs are to be divided between the two owners. These costs include:

- the remuneration and expenses paid to the fence-viewers;
- the administrative fees of the municipality, if the council has passed a bylaw to establish such fees under subsection 17 (1); and
- the fees of a surveyor, but only in the situation where the fence-viewers have hired a surveyor under subsection 8(5) to provide a legal description of a fence that is to be located other than on the boundary line.

If an award makes both owners responsible for half of the fence, it seems appropriate in most cases for the costs of the proceedings to be divided equally between the two owners. However, this is a matter for the fence-viewers to decide, again based on the circumstances of the case.

Allocation of Costs to the Proceedings

If, for example, one owner has refused to co-operate, thereby making the process more complicated, the fence-viewers could decide to make that owner responsible for a larger portion or even all the costs of the proceedings. Whatever their decision, it is important that all of these costs be paid by the two owners involved in the arbitration procedure, and not by the taxpayers of the municipality.

In Summary: The Fence-Viewers' Award

In making their award, the fence-viewers should:

- consider ALL of the relevant factors and circumstances of the case;
- complete the award (Form 4) in its entirety and ensure that it is signed by at least two of them;
- provide a detailed description of the fence;
- not be wedded automatically to the fifty/fifty rule in every case;
- be cautious about varying too much from the fifty/fifty rule except where it is genuinely warranted by the particular circumstances;
- specify the date by which the work is to be started and completed; and
- allocate the costs of the proceedings to the two owners.

Part Five: The Appeal Procedure

Section 10 of the Act establishes a relatively simple appeal procedure, under which appeals are heard by a provincially-appointed referee or deputy referee.

An owner who is dissatisfied with an award has fifteen days from the date of receiving a certified copy to initiate an appeal. As noted previously, an award is deemed to have been received seven days after being sent by registered mail. Only the original award of the fence-viewers can be appealed.

The appeal procedure works in the following manner:

- The owner who wishes to appeal the award (Owner A) is required to file a notice of appeal in Form 5 with the adjoining owner (Owner B) by registered mail or personal delivery.
- Owner A is required to file a copy of this notice of appeal with the clerk, together with an affidavit of service of the notice in Form 6.
- Owner A is also required to submit the prescribed fee, which is currently $50, to the clerk, payable to the Minister of Finance.
- The clerk submits copies of the award (Form 4), the notice of appeal (Form 5), the affidavit of service (Form 6), and Owner A's cheque or money order to:
  Ministry of Municipal Affairs and Housing
  Municipal Programs and Education Branch
  777 Bay Street, 3rd Floor
  Toronto, ON M5G 2E5
  (416) 585-7296
- The Ministry forwards the three documents to the office of the line fence referee, who contacts the clerk to establish a time and date for the appeal hearing. The hearing is held in the municipal office.
- The clerk is required, in accordance with a letter from the referee, to provide notice to the owners and fence-viewers by registered mail at least ten days in advance of the appeal hearing.
- The clerk is also required, in accordance with this letter, to provide a suitable room for the hearing capable of holding ten to fifteen people, a Bible, a small sketch of the properties from the assessment map, and certified copies of the notice of the appeal hearing, the award (Form 4), the notice of appeal (Form 5), the affidavit of service (Form 6), and any fencing bylaws in force in the municipality.
- One of the fence-viewers who participated in the viewing should to attend the appeal hearing to provide evidence, if necessary.
- The referee or one of the deputy referees hears the appeal "and may set aside, alter or affirm the award". This decision is final.
- The municipality is responsible for all necessary support services (section 28), including the preparation of the decision if this is requested.
- The clerk is required to send a copy of the appeal decision by registered mail to both owners and to the Ministry of Municipal Affairs and Housing.

Once the arbitration procedure has been completed, the implementation of the award becomes the responsibility of the two owners. If, for example, they agree not to do the work specified in the award or to construct a different type of fence than specified in the award, they are entitled to do so, provided that this fence complies with the municipality's bylaws. It is important to note that the municipality is not required to ensure that the award is implemented if the two owners decide that they do not wish it so.

Part Six: Enforcement Issues

This part provides information on the enforcement of a fence-viewers' award and on other enforcement issues.

Enforcement of an Award

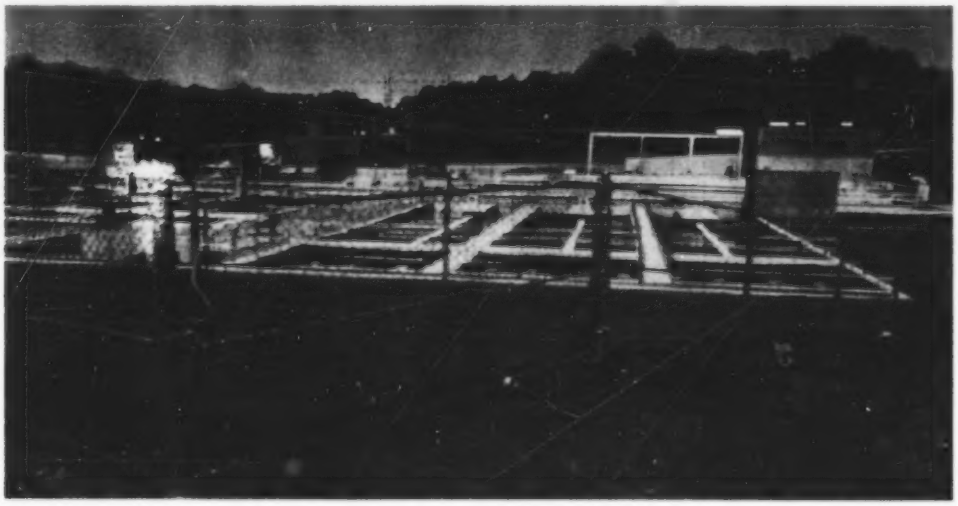
The enforcement procedures set out in the Act come into play only at the request of one of the two owners involved in a dispute. If, for example, one owner (Owner A) wants the award to be implemented and the other owner (Owner B) is unwilling to co-operate, Owner A can utilize these enforcement procedures, which are applicable to the following three types of situations.

The Work Done by One of the Owners Does Not Comply with the Award

The first type of situation occurs when an award makes both Owner A and Owner B responsible for constructing, reconstructing or repairing a designated portion of the fence by a certain date. Both owners complete what they believe to be the work specified in the award by the completion date. Owner A, however, believes that the work done by Owner B does not, in fact, comply with the award. To determine whether Owner B has complied with the award in this type of situation, an additional re-attendance by the fence-viewers is required under section 13 of the Act.

Owner A is required to send a notice to Owner B by registered mail or personal delivery requiring Owner B to take action to bring the work into compliance with the award. If Owner B does not complete this work within two weeks, Owner A can apply to the clerk to have the fence-viewers reconvene to review the work that has been done. The clerk is responsible for setting a time and date for this re-attendance which, like the original viewing, has to be held not more than thirty days from the date of Owner A's application. The clerk is also responsible for notifying the owners by registered mail or personal delivery in Form 2 and the fence-viewers by registered mail in Form 3, at least one week before the re-attendance.

If the fence-viewers are satisfied that the work done by Owner B does not comply with the award, they are required, under subsection 13 (6) of the act, to make a determination with directions in Form 12 specifying the action to be taken by Owner B to make the work comply with the award and the date by which it is to be completed. The clerk is responsible for sending a certified copy of this determination with directions to the owners and occupants of the lands by registered mail. If Owner B does not complete the work by the specified date, Owner A can do or complete the work in the same manner as in the second type of situation, which is described immediately below, and can then institute proceedings to recover the value of that work from Owner B.



If the fence-viewers decide that the work done by Owner B does, in fact, comply with the award, they cannot make a determination with directions in Form 12. Instead, they must use Form 13 to explain the reasons for their decision and to allocate the costs of the proceedings to one or both of the owners.

One Owner Does Not Do the Work Specified in the Award

The second type of situation occurs when an award makes both Owner A and Owner B responsible for constructing, reconstructing or repairing a designated portion of the fence by a specific date. Owner A completes the necessary work by the completion date, but Owner B does not. To enforce the award, Owner A is required, under subsections 11 (1) to (5) of the act, to send a notice to Owner B by registered mail or personal delivery requiring Owner B to obey the award. If Owner B does not complete the work within two weeks, Owner A can then do the necessary work, including entering Owner B's property for this purpose. The Act makes it an offence for Owner B to obstruct Owner A from entering Owner B's property in this case. Once the work has been done, Owner A can institute proceedings to recover the value of that work from Owner B.

Many people are under the impression that the fence-viewers are required to re-attend before Owner A can do the work for which Owner B was made responsible in the award. In fact, the fence-viewers are not required to become involved in this second type of situation until after Owner A has done the work for which Owner B was responsible.

Before starting any work in this situation, however, Owner A should ensure that he or she can provide evidence that Owner B did not carry out the work specified in the award. This can be done by taking some dated photographs or by asking a friend or neighbour to act as a witness. Such evidence is crucial in the event that the fence-viewers are faced at the re-attendance with a disagreement between the two owners about what work was or was not done by each of them.

One Owner Does Not Pay His or Her Share of the Work

The third type of situation occurs when an award makes Owner A responsible for constructing, reconstructing or repairing the entire fence, and makes Owner B responsible for paying a portion of the cost of the work to Owner A. Owner A completes the necessary work but Owner B does not pay Owner A for his or her share of the work. To enforce the award, Owner A is required, under subsection 11 (6) of the act, to send a notice to Owner B by registered mail or personal delivery requiring Owner B to obey the award. If Owner B does not do so by paying the amount owed within twenty-eight days, Owner A can then institute proceedings to recover this amount from Owner B.

Certification of the Amount Owed

To recover the costs of the work in all three types of situation, Owner A is required, under subsections 11 (7) to (10) of the act, to apply to the clerk to have the fence-viewers reconvene. The clerk is responsible for setting a date and time for this re-attendance and for notifying the two owners by registered mail or personal delivery in Form 7 and the three fence-viewers by registered mail in Form 8. If one of the original fence-viewers is unable to attend, the clerk is required to notify another fence-viewer. These notices have to be served at least one week before the re-attendance.

If the fence-viewers are satisfied that Owner B has failed to obey the award, they are required, under subsection 12 (1) to 12 (4), to prepare a certificate of default in either Form 9 or Form 10 certifying Owner B's default and specifying the amount that is payable by Owner B to Owner A. The clerk is responsible for sending a certified copy of this certificate of default by registered mail to the owners and to any occupants of the lands.

If, however, the fence-viewers are unable to determine that Owner B has failed to obey the award, they cannot prepare a certificate of default. Instead, they must use Form 13 to explain the reasons for their decision and to allocate the costs of the proceedings to one or both of the owners.

If Owner B pays the amount certified by the fence-viewers to Owner A in their certificate of default, the matter is completed. If, however, Owner B fails or refuses to do so, there are three possible methods by which Owner A can collect this amount.

Collection of this Amount

Collection in the Same Manner as Taxes (Subsection 12 (5))

Owner A can apply in writing to the clerk to have the amount certified added to the collector's roll, in which case the Act requires the municipality to ensure that this is done. This amount is then collected from Owner B in the same manner as taxes, together with interest at the same rate as unpaid taxes. Under this method of collection, Owner A receives the amount certified, with interest, when it has been collected from Owner B.

The amount added to the collector's roll does not have priority lien status, so the tax sales provisions of the Municipal Act, 2001 are not applicable to this situation.

Immediate Payment by the Treasurer (Subsections 12 (6) to (8))

Owner A can apply to the treasurer of the municipality for immediate payment of the amount certified, but only if the council has passed a bylaw to permit this. The amount is then paid to Owner A by the treasurer, and is added to the collector's roll and collected from Owner B in the same manner as taxes, together with interest at the same rate as unpaid taxes. Under this method the municipality does not receive the amount until it has been collected from Owner B.

The amount added to the collector's roll does not have priority lien status, so the tax sales provisions of the Municipal Act, 2001 are not applicable to this situation.

Action in the Small Claims Court (Subsection 12 (9))

Instead of applying to the municipality, Owner A can file a certified copy of the certificate of default (Form 10) and of the original award (Form 4) with the clerk of the Small Claims Court. Once filed, the amount certified may be levied against the goods and chattels and lands of Owner B in the same manner as the amount of a judgement in the Small Claims Court.

Part Seven: Checklists

Part Seven provides two checklists: the first is for clerks and other staff members who are responsible for the administration of the arbitration procedure; the second is for fence-viewers. Their purpose is to provide assistance in complying with the procedural requirements of the Act. These checklists do not include the steps involved in the enforcement of an award, which are described in Part Six of this Guide.

Checklist for the Clerk

Note: The answer to each question must be "yes" except for questions noted as "optional".

Before Agreeing to Schedule a Viewing

- ☐ Is the applicant for a viewing the owner of one of the two adjoining properties and not a tenant? (See subsection 4(1))
- ☐ Has the applicant completed Form 1: Request for Fence-Viewers, in its entirety before submitting it? (See subsection 4(1))
- ☐ Does the description of the lands in Form 1 appear to be "sufficient for registration in the appropriate Land Registry Office"? (See Form 1)
- ☐ Does the applicant want a line fence to be constructed or, if there is an existing line fence, is all or part of it in need of repair or reconstruction? (See subsection 4(1))
- ☐ Am I satisfied that the boundary line between the two properties is not in dispute? (See Form 1)
- ☐ Does the Act apply to both properties? (See Part Two)
- ☐ If there is an unopened road allowance between the two properties, has the municipal council authorized a viewing to proceed? (See section 19)
- ☐ Does the municipality have a bylaw in place appointing at least three fence-viewers and fixing their remuneration? (See section 2)
- ☐ Have the owners made an effort to settle their dispute informally, without the need for a formal viewing by the fence-viewers? (optional)

Scheduling a Viewing

- ☐ If there is a bylaw prohibiting viewing during the winter, does the date of the viewing comply with this bylaw? (See subsection 5(2))
- ☐ Does the date of the viewing comply with the requirement that it be "not more than thirty days" from the day that Form 1 was submitted by the applicant? (See subsection 4 (3))
- ☐ Have the two owners been notified in Form 2 of the date, time and place of the viewing by registered mail or personal delivery? (See subsections 4 (2) and (3))
- ☐ Have at least three of the municipality's fence-viewers been notified in Form 3 of the date, time and place of the viewing by registered mail? (See subsections 4 (2) and (3))
- ☐ Have the owners and fence-viewers been notified at least one week before the viewing? (See subsection 4 (2))

Prior to the Date of the Viewing

- ☐ Have the fence-viewers been given copies of the completed Form 2 along with proof of service? (Optional)
- ☐ Have the fence-viewers been given copies of any bylaws that regulate fences in the municipality? (See subsection 8 (3))
- ☐ Have the fence-viewers been given a copy of any bylaw that establishes administrative fees for proceedings under the Act? (See section 17)
- ☐ Have the fence-viewers been provided with the wording to administer an oath so that they may hear evidence from the owners and their witnesses under oath, if required to do so by an owner? (See section 7)
- ☐ Have the fence-viewers been provided with a copy of the Statutory Powers Procedure Act? (Optional)
- ☐ Have I met with the fence-viewers, together with any other relevant persons, to discuss the circumstances of the case? (Optional)

On or Immediately Before the Day Scheduled for the Viewing

- ☐ If it becomes necessary for me to postpone the viewing because of weather, ground conditions or any other reason, have the two owners and fence-viewers been notified by telephone or e-mail? (See clause 5 (1) (a))
- ☐ If this occurs, does the new date scheduled for the viewing comply with the requirement that it be not later than fifteen days after the postponed viewing? (See clause 5 (1) (b))
- ☐ Have the owners been notified in Form 2 of the new date of the viewing by registered mail or personal delivery? (See subsections 4 (2) and (3))
- ☐ Have the three fence-viewers been notified in Form 3 of the new date of the viewing by registered mail? (See subsections 4 (2) and (3))
- ☐ Have the owners and fence-viewers been notified at least one week before the new date of the viewing? (See subsection 4 (2))

After the Viewing

- ☐ If the three fence-viewers in attendance at the viewing decided that they had jurisdiction to make an award, have they completed their award in Form 4, signed by at least two of them? (See subsection 8 (1))
- ☐ Have the fence-viewers deposited their award in my office, and have certified copies of it been sent to the two owners and any occupants of their lands by registered mail? (See subsection 9 (1))
- ☐ If the three fence-viewers in attendance at the viewing decided not to make an award, either because they did not have jurisdiction or because the owners did not want an award, have they completed Form 13 giving their reasons for this decision and specifying how the costs of the proceedings are to be apportioned between the two owners? (See subsection 14 (1))
- ☐ Have the fence-viewers deposited the completed Form 13 in my office, and have certified copies of it been sent to the two owners and any occupants of their lands by registered mail? (See subsection 14 (2))

Appeal Procedure

- ☐ Have both owners been advised of their right to appeal the award? (Optional)
- ☐ Has one owner submitted a copy of a Notice of Appeal (Form 5), together with an Affidavit of Service of the Notice of Appeal (Form 6) to the other owner, and a cheque or money order for $50.00 payable to the Minister of Finance? (See subsection 10 (1))
- ☐ Has the Notice of Appeal been submitted within fifteen days of that owner having received a copy of the award, i.e. no later than 22 days after the day that award was mailed? (See subsections 9 (3) and 10 (1))
- ☐ Has the owner who is appealing the award served Notice of the Appeal (Form 5) on the other owner by registered mail or personal delivery? (See subsections 10 (1) and (2))
- ☐ Have copies of the Award (Form 4), Notice of Appeal (Form 5), Affidavit of Service (Form 6) and the cheque or money order been forwarded to the Ministry of Municipal Affairs and Housing? (See Part Five)
- ☐ Has my office complied with the instructions of the referee by arranging a suitable room for the appeal hearing and by providing all required materials and documents? (See section 28 and Part Five)
- ☐ Has notice been provided to the owners and fence-viewers by registered mail at least ten days before the hearing, in accordance with the referee's instructions? (See Part Five)
- ☐ Have arrangements been made for one of the fence-viewers to attend the hearing? (See Part Five)
- ☐ After the hearing, has my office prepared a copy of the decision of the referee or deputy referee, if requested to do so? (See section 28)
- ☐ Has a copy of the decision of the referee or deputy referee been sent to the two owners and to the Ministry of Municipal Affairs and Housing by registered mail? (See subsection 10 (9))

Payment of the Fence-Viewers' Fees

- ☐ Have the fence-viewers' fees been paid at the end of the appeal period or, if an appeal has been filed, after a decision on the appeal has been made by the referee or deputy referee? (See subsection 18 (2))

Checklist for Fence-Viewers

Prior to the Viewing

- ☐ Have we been notified of the date, time and place of the viewing in Form 3 by registered mail at least one week before the viewing? (See subsections 4 (2) and (3))
- ☐ Have we been provided with copies of the completed Form 2 along with proof of service? (Optional)
- ☐ Have we been provided with copies of any bylaws that regulate fences in the municipality? (See subsection 8 (3))
- ☐ Have we been provided with copies of any bylaw that establishes administrative fees for proceedings under the Act? (See section 17)
- ☐ Have we been provided with the wording necessary to administer an oath, in case we are required by an owner to hear evidence from the owners and their witnesses under oath? (See section 7)
- ☐ Have we been provided with a copy of the Statutory Powers Procedure Act? (Optional)
- ☐ Have we met with the clerk and any other relevant persons to discuss the circumstances of the case? (Optional)
- ☐ If we find that we are not going to be able to attend the viewing, have we advised the clerk of this as soon as possible? (See subsection 4 (2))

At the Viewing

- ☐ Are three of us in attendance at the viewing? (See subsection 4 (2))
- ☐ If fewer than three of us are in attendance, have we adjourned the viewing and notified the clerk and the two owners? (See subsection 4 (2))
- ☐ If the two owners say that they do not want us to make an award, e.g. because they have come to an agreement, have we adjourned the viewing and notified the clerk and the two owners? (See section 14)
- ☐ If we decide that we do not have jurisdiction to make an award, e.g. because there is a genuine boundary dispute, have we adjourned the viewing and notified the clerk and the two owners? (See section 14)
- ☐ If we find that one owner has constructed, reconstructed or repaired the entire line fence prior to the viewing, have we adjourned the viewing and notified the clerk and the two owners that we cannot make an award in these circumstances? (See subsection 4 (1))
- ☐ If there is an existing line fence, are we satisfied that part, or all of it, is in need of reconstruction or repair? (See subsection 4 (1))
- ☐ If an existing fence does not appear to be on the surveyed boundary line between the properties, are both owners willing to continue to have the fence in that location? (See Part Two)

Conduct of the Viewing

- ☐ Have we examined the premises, i.e. the boundary line, preferably from the applicant's side of the fence? (See section 7)
- ☐ If both owners are in attendance, have we given them an opportunity to listen to each other's evidence and to respond? (See Part Three)
- ☐ Even if both owners are not in attendance, have we made every effort to treat them in exactly the same manner? (See Part Three)
- ☐ Have we provided both owners and their witnesses, if any, a full opportunity to present their evidence? (See Part Three)
- ☐ Have we been open to the evidence that we have seen and heard at the viewing? (See Part Three)
- ☐ Have we heard the evidence and examined the owners and their witnesses, if any, under oath, if required by either owner? (See section 7)
- ☐ Have we considered the needs of both owners, the nature of the terrain, the benefit to both owners of a line fence, the nature of fences in the locality, and any other relevant factors? (See subsection 8 (2))
- ☐ Have we kept a record of the viewing, including notes on such matters as the names of those in attendance, the positions of the two owners, and any other relevant circumstances? (See Part Three)
- ☐ At the end of the viewing, have we advised the owners that they will receive our decision in due course, rather than giving them a verbal indication of what our decision will be? (See Part Three)

After the Viewing

- ☐ Have we met at the municipal office soon after the viewing, perhaps with the clerk, to consider the contents of our award? (See Part Three)
- ☐ Have we completed our award in Form 4 in its entirety and dealt with all of the following matters: (1) the location of the fence; (2) the description of the fence; (3) the division of responsibility for the fence; (4) the starting and completion dates; and (5) the apportionment of the costs of the proceedings between the two owners? (See subsection 8 (1))
- ☐ Have at least two of us signed the award? (See subsection 8 (1))
- ☐ If we believe that it would be unjust to make both owners responsible for 50 per cent of the fence, have we varied from the fifty/fifty rule in our award? (See clause 8(1)(b) and Part Four)
- ☐ If we have varied from the fifty/fifty rule in our award, have we made notes on the reasons for this decision? (See Part Three)
- ☐ If one property is provincially-owned, have we limited the province's responsibility for the work to 50%? (See subsection 24 (3))
- ☐ If there is an unopened road allowance between the two properties, have we divided it equally between the owners? (See subsection 19 (1))
- ☐ If there is a fencing bylaw, does the description of the fence specified in our award conform to that bylaw? (See subsection 8 (3))

- ☐ If there is a bylaw establishing administrative costs, have we included these in the costs of the proceedings, in addition to the fees of the fence-viewers? (See section 17)

- ☐ If, because of streams or other causes, it is necessary for the fence to be located other than on the boundary line, have we employed a surveyor to provide a description of this location? (See subsections 8 (4) and (5))

- ☐ If a surveyor has been employed for this purpose, have we included these fees in the costs of the proceedings? (See subsection 18 (1))

- ☐ Have we deposited our award (Form 4) in the office of the clerk? (See subsection 9 (1))

If No Award is Made

- ☐ If we made no award either because we did not have jurisdiction or because the owners did not want an award, have we completed Form 13 giving our reasons for this decision and apportioning the costs of the proceedings between the owners? (See subsection 14 (1))

- ☐ If there is a bylaw establishing administrative costs, have we included these in the costs of the proceedings, in addition to the fees of the fence-viewers? (See section 17)

- ☐ Have we deposited the completed Form 13 in the office of the clerk? (See subsection 14(2))

If The Award is Appealed

- ☐ Have we received notice by registered mail at least ten days before the hearing, in accordance with the instructions of the referee? (See Part Five)

- ☐ Have arrangements been made for one of us to attend the hearing to provide evidence, if necessary? (See Part Five)

Part Eight: Forms

There are a number of forms that are required to be completed. These forms are reproduced here for information purposes only. The original documents are available on e-laws (www.e-laws.gov.on.ca/DBLaws/Regs/English/900715_e.htm) in O.Reg 715, R.R.O 1990. Alternatively, these forms as well are available through publication sources that provide municipalities with generic forms to meet their daily needs.

Form 1: Request for Fence-Viewers

Form 2: Clerk's Notice to Parties (Dispute)

Form 3: Clerk's Notice to Fence-Viewers (Dispute)

Form 4: Award

Form 5: Owner's Notice of Appeal from Fence-Viewers' Award

Form 6: Affidavit of Service of Notice of Appeal

Form 7: Clerk's Notice to Parties (Certification)

Form 8: Clerk's Notice to Fence-Viewers (Certification)

Form 9: Certificate of Default (Work Not Done)

Form 10: Certificate of Default (Payment Not Made)

Form 11: Treasurer's Notice of Amount Owed to Municipality by Defaulting Owner

Form 12: Determination with Directions

Form 13: Decision of Fence-Viewers Where No Award, Certificate, Etc., is Made

Form 14: Agreement

Form 15: Agreement (Where One Party is a Municipality or Local Board)

Form 1

REQUEST FOR FENCE VIEWERS - (Subsection 4 (1) of the Act)

I,....., being the owner of certain lands being.....

(description of lands sufficient for registration n the appropriate Land Registry Office)

do hereby serve notice that I desire and request that three fence-viewers attend, view and arbitrate in the matter of a dispute over the responsibility for a line fence marking the boundary between my land and that of an adjoining land owner, namely:....., whose lands may be more particularly described as:.....

.....

(description of lands sufficient for registration in appropriate Land Registry Office)

I understand that the descriptions of my land and the land of..... provided above are the descriptions that will be used in the fence-viewers' award and in any certificate subsequently made by the fence-viewers in respect of the award and therefore have ensured that the descriptions are accurate and are sufficient for registration in the appropriate Land Registry Office.

The status of the line fence marking the boundary of our adjoining lands is:

Check appropriate box ☐ non-existent at the present time

☐ in need of reconstruction

☐ in need of maintenance, repair and keeping-up

* The boundary line between our lands is not in dispute.

Dated at the .....of.....this.....day of....., 19.....

Witness..... *Person desiring fence-viewers to view and arbitrate*.....

* Fence-viewers have no jurisdiction to resolve boundary disputes.

Form 2

CLERK'S NOTICE TO PARTIES (DISPUTE) - (Subsection 4 (2) of the Act)

Take notice that three fence-viewers of this locality will attend at the lands described below on:

Day .....

Month .....

Year .....

Hour .....

to view and arbitrate on a line fence between the lands of: ....

(name of owner who initiated proceedings)

being .....

(description of lands sufficient to identify the property whether by municipal address or otherwise)

and the lands of .....

(name of owner of adjoining land)

being .....

(description of lands sufficient to identify the property whether by municipal address or otherwise)

AND take notice that if a party, having been notified, does not attend the fence-viewing, the fence-viewers may proceed in that party's absence and, except as otherwise provided in the Line Fences Act, the party will not be entitled to any further notice in the proceedings.

Dated the ..... day of ....., 19.....

To: (Owner or Occupant Notified) .....

(clerk or other designated person)

.....

(person desiring fence-viewers to view and arbitrate)

Form 3
CLERK'S NOTICE TO FENCE-VIEWERS (DISPUTE) - (Subsection 4 (2) of the Act)

Take notice that I require you to attend at the lands described below on:

Day .....

Month .....

Year .....

Hour .....

to view and arbitrate on a line fence between the lands of: .....
(name of owner who initiated proceedings)

being .....
(description of lands sufficient to identify the property whether by municipal address or otherwise)

and the lands of .....
(name of owner of adjoining land)

being .....
(description of lands sufficient to identify the property whether by municipal address or otherwise)

AND take notice that if a party, having been notified, does not attend the fence-viewing, the fence-viewers may proceed in that party's absence and, except as otherwise provided in the Line Fences Act, the party will not be entitled to any further notice in the proceedings.

.....
(clerk or other designated person)

To: Fence-Viewers

Form 4
AWARD - (Subsection 8 (1) of the Act)

For descriptions use the descriptions provided in Form 1, if used, and attach a Schedule if required.

We, the fence-viewers of (*name and locality*) having been called upon to view and arbitrate for purposes of settling a dispute over a line fence between the lands of (*name of owner who initiated proceedings*) being (*description of lands sufficient for registration in the appropriate Land Registry Office*), and the lands of (*name of owner against whom proceedings initiated*) being (*description of lands sufficient for registration in the appropriate Land Registry Office*), and having examined the lands and duly acted according to the *Line Fences Act*, award as follows:

Check appropriate box.

1. A fence to mark the boundary line between the adjoining lands described above shall be

☐ constructed, maintained and kept up

☐ reconstructed, maintained and kept up

☐ repaired, maintained and kept up

Complete A, B, or C, whichever is appropriate.

2. A. ..... shall be responsible for
(Name of owner)

constructing/reconstructing/repairing (*delete inappropriate terms*) maintaining and keeping up that part of the fence that commences at (*description of point*) and ends at (*description of point*);

..... shall be responsible for
(Name of adjoining owner)

constructing/reconstructing/repairing (*delete inappropriate terms*) maintaining and keeping up that part of the fence that commences at (*description of point*) and ends at (*description of point*).

or

..... shall be responsible for
(Name of owner)

constructing/reconstructing/repairing (*delete inappropriate terms*) maintaining and keeping up the fence and

..... shall pay to .....
(Name of owner) (Name of adjoining owner)

one-half of the costs of the work incurred as a result of this award upon being notified of the amount of such costs in accordance with the *Line Fences Act*.

or

C. The fence-viewers are of the opinion that an award in the terms of 2A or 2B would be unjust and that the following award would be appropriate: .....

3. The fence shall be of the following description (state the kind of fence, height, material, etc.). (Attach schedule if necessary.)

.....

4. The work shall be commenced not later that the .....day of ....., 19..... and shall be completed not later than the ..... day of ....., 19 .....

5. The costs of the proceeding are fixed at $... ..... determined as follows:

Item	Amount
Fence-viewers' fees for this attendance	.....
Administrative fees fixed by by-law under subsection 17 (1) of the Act	.....
Fees of Ontario land surveyor if employed under subsection 8 (5) of the Act	.....
Total costs	_____

..... shall pay ..... %
(Name of owner)

of the total costs of the proceeding, namely, $ .....

..... shall pay ..... %
(Name of adjoining owner)

of the total costs of the proceeding, namely, $ .....

Payments shall be made to .....
(Name of municipality in which lands subject to the award are situate)

Dated the ..... day of ....., 19 .....

Signature of Witness ..... Signature of Fence-Viewers .....

....

Form 5

OWNER'S NOTICE OF APPEAL FROM FENCE-VIEWERS' AWARD - (Subsection 10 (1) of the Act)

BETWEEN: ..... Appellant

- and -

.....Respondent

TAKE NOTICE that I, ... , appeal to the referee from the award made by the fence-viewers of

..... on the ..... day of ..... , 19 ..... a certified copy of which award is
(locality)

attached and ask that (*set out briefly what is desired*) .....

.....

.....

.....

upon the following grounds: (*state the grounds clearly but briefly*)

Dated this ..... day of ..... , 19 .....

TO: Respondent Owner .....

Home address .....

Owner instituting appeal .....

Home address .....

And to: (The clerk of the .....)

(Name of municipality in which lands subject to the award are situate)

Form 6

AFFIDAVIT OF SERVICE OF NOTICE OF APPEAL (Subsection 10 (1) of the Act)

BETWEEN: ..... Appellant

- and -

.....Respondent

I, ... , of the ..... of .....

in the ..... of ..... (occupation),

make oath and say (or affirm) as follows:

I did on ..... , the ..... day of ....., 19 .....

☐ (a) send by prepaid registered mail to the above-named Respondent, in respect of which the certificate of such registration is attached hereto;

Check appropriate box

or

☐ (b) personally serve on the above-named Respondent, or on a resident of the Respondent's dwelling house over the age of 18 years,

the Notice of Appeal required under subsection 10 (1) of the *Line Fences Act*, a certified true copy thereof being attached hereto.

In effecting the service, I necessarily travelled ..... kilometres.

Sworn (or affirmed) before me .....

at the .....

of ....

in the ..... Signature

of .....

this of ..... day of ....., 19 .....

.....

(Commissioner for taking affidavits, etc.)

Form 7

CLERK'S NOTICE TO PARTIES (CERTIFICATION) -(Subsection 11 (8) of the Act)

Take notice that three fence-viewers of this locality, will reattend the lands, described below, on the ..... day of ..... , 19 ..... at the hour of ..... to determine whether (*name of owner against whom award is being enforced*) hereinafter referred to as Owner A) has obeyed the directions of the award made the ..... day of ..... , 19 ..... in respect of a line fence marking the boundary between Owner A's lands being (*description of the lands sufficient to identify the property whether by municipal address or otherwise*), and the lands of (*name of owner causing the notice to be given, hereinafter referred to as Owner B*), being (*description of the lands sufficient to identify the property whether by municipal address or otherwise*), and if satisfied that (*name of Owner A*) has failed to obey the directions of the award, the said fence-viewers --

1. a. Will certify the value of the work done at the expense of (*name of Owner B*), which pursuant to the award ought to have been done by (*name of Owner A*)

or

Delete a or b, whichever is inapplicable

b. will determine the value of the work done by (*Name of Owner B*) and certify the amount payable by (*name of Owner A*) as Owner A's share of the costs of the work; and

2. Will fix the costs of the proceedings, including the costs of the original fence-viewing proceedings at which the award was made, and will certify the portion of the costs payable by (*name of Owner A*) to (*name of Owner B*);

and the total amount certified may be collected from (*name of Owner A*) in the same manner as municipal taxes or as the amount of a judgment of the Small Claims Court.

You are hereby notified that if you do not attend at the time and place specified above the fence-viewers may proceed in your absence and, except as otherwise provided in the Line Fences Act, you will not be entitled to any further notice in these proceedings.

Dated the ..... day of ..... , 19 .....

TO: *Owner or Occupant Notified*

Clerk (or other designated person)

Form 8

CLERK'S NOTICE TO FENCE-VIEWERS (CLARIFICATION) -(Subsection 11 (8) of the Act)

Take notice that I require you to reattend at the lands described below on the ..... day of ..... , 19 ..... at the hour of ..... , to determine whether the award made the ..... day of ..... , 19 ..... , in respect of the line fence between the lands of (*name of owner causing the notice to be given*) being (*description of lands sufficient to identify the property whether by municipal address or otherwise*), and the lands of (*name of owner against whom award is being enforced*) being (*description of lands sufficient to identify the property whether by municipal address or otherwise*), has been obeyed by the said (*name of owner against whom award is being enforced*) and, if you are satisfied that the award has not been obeyed and that (*name of owner against whom award is being enforced*) or the occupant of the owner's land was duly notified under subsection 11 (1) or (6) , to make a certification pursuant to section 12 of the *Line Fences Act*.

Dated the ..... day of ..... , 19 .....

TO: *Fence-Viewers*

.....

Clerk (or other designated person)

Form 9

CERTIFICATION OF DEFAULT (WORK NOT DONE) -(Clause 12 (1) of the Act)

We, the fence-viewers of (*name of locality*), have been called upon to determine whether (*name of owner against whom award is being enforced*), hereinafter referred to as Owner A, has obeyed the award made the ..... day of ....., 19 ....., in respect of a line fence between Owner A's lands being (*description of lands sufficient for registration in the appropriate Land Registry Office*), and the lands of (*name of owner seeking to enforce the award*), hereinafter referred to as Owner B, being, (*description of lands sufficient for registration in the appropriate Land Registry Office*), and having examined the lands and duly acted according to the *Line Fences Act*, certify as follows:

Owner A has failed to obey the award made the ..... day of ..... , 19..... , in respect of a line fence marking the boundary between Owner A's lands and the lands of Owner B in that (*give particulars of default*):

.....

.....

.....

.....

Value of Work	The value of the work done at the expense of Owner B, which according to the award ought to have been done by Owner A, is hereby certified to be:	$ .....
Amount Certified	The amount payable by Owner A to Owner B is hereby certified to be:	$ .....
Costs	The costs of these proceedings are fixed and determined as follows:	

Item	Amount
Fence-viewers' fees for this attendance	.....
Administrative fees fixed by by-law under subsection 17 (1) of the Act	.....
Total costs	_____

Owner A shall pay ..... % of the costs of this proceeding, namely, $ .....

Owner B shall pay ..... % of the costs of this proceeding, namely, $ .....

Payments shall be made to.....

(Name of municipality in which lands subject to the award are situate)

Dated the ..... day of ..... , 19.....

Signature of Witness

.....

Signature of Fence-Viewers

.....

.....

.....

Form 10

CERTIFICATE OF DEFAULT (PAYMENT NOT MADE) -(Clause 12 (1) (b) of the Act)

We, the fence-viewers of (*name of locality*), have been called upon to determine whether (*name of owner against whom award is being enforced*), hereinafter referred to as Owner A, has obeyed the award made the ..... day of ....., 19 ....., in respect of a line fence between Owner A's lands being (*description of lands sufficient for registration in the appropriate Land Registry Office*), and the lands of (*name of owner seeking to enforce the award*), hereinafter referred to as Owner B, being, (*description of lands sufficient for registration in the appropriate Land Registry Office*), and having examined the lands and duly acted according to the *Line Fences Act*, certify as follows:

Owner A has failed to obey the award made the ..... day of ..... , 19..... , in respect of a line fence marking the boundary between Owner A's lands and the lands of Owner B in that (*give particulars of default*):

.....

.....

.....

.....

Value of Work — The value of the work done at the expense of Owner B, which according to the award ought to have been done by Owner A, is hereby certified to be:

Amount Certified — The amount payable by Owner A to Owner B is hereby certified to be:

Costs — The costs of these proceedings are fixed and determined as follows:

Item	Amount
Fence-viewers' fees for this attendance	.....
Administrative fees fixed by by-law under subsection 17 (1) of the Act	.....
Total costs	_____

Owner A shall pay ..... % of the costs of this proceeding, namely, $ .....

Owner B shall pay ..... % of the costs of this proceeding, namely, $ .....

Payments shall be made to.....

(Name of municipality in which lands subject to the award are situate)

Dated the ..... day of ..... , 19.....

Signature of Witness

.....

Signature of Fence-Viewers

.....

.....

.....

Form 11

TREASURER'S NOTICE OF AMOUNT OWED TO MUNICIPALITY BY DEFAULTING OWNER

-(Subsection 12 (8) of the Act)

Take notice that the amount of $ .....

has been paid out of the general funds of ..... to ..... on the ..... day of

(name of Municipality) (name of owner who received payment from the treasurer)

..... , 19 ..... , in respect of an amount owing by you to .....

(name of owner who received payment from the treasurer)

pursuant to a certificate of default dated the ..... day of ..... , 19 .....

That amount together with interest thereon at ..... % accruing from the .....

(date of payment by treasurer mentioned above)

is now due and payable by you to the said municipality.

The amount has been placed on the tax roll and may be collected together with interest thereon in the same manner as taxes and until paid is a charge upon your land.

To: Defaulting Owner

.....

(Municipal Treasurer)

Form 12
DETERMINATION WITH DIRECTIONS -(Subsection 13 (6) of the Act)

We, the fence-viewers of (*name of locality*), have been called upon to determine whether (*name of owner against whom award is being enforced*), hereinafter referred to as Owner A, has obeyed the award made the ..... day of ....., 19 ....., in respect of a line fence between his or her lands being (*description of lands sufficient to identify the property whether by municipal address or otherwise*), and the lands of (*name of owner seeking to enforce the award*), hereinafter referred to as Owner B, being, (*description of lands sufficient to identify the property whether by municipal address or otherwise*), and having viewed the work and duly acted according to the *Line Fences Act*, certify as follows:

Owner A has failed to comply with the award made the ..... day of ..... , 19..... , in respect of a line fence marking the boundary between Owner A's lands and the lands of Owner B in that (*give particulars of non-compliance*):

.....

It shall be necessary for Owner A to take the following action to make the work comply with the award: (*specify the action required to make the work comply*)

.....

The work shall be commenced not later than the ..... day of ..... , 19 ....., and shall be completed not later than the ..... day of ..... , 19 .....

The costs of the proceeding are fixed and determined as follows:

Item	Amount
Fence-viewers' fees for this attendance	.....
Administrative fees fixed by by-law under subsection 17 (1) of the Act	.....
Total costs	_____

Owner A shall pay ..... % of the costs of this proceeding, namely, $ .....

Owner B shall pay ..... % of the costs of this proceeding, namely, $ .....

Payments shall be made to.....

(Name of municipality in which lands subject to the award are situate)

Dated the ..... day of ..... , 19.....

Signature of Witness

.....

Signature of Fence-Viewers

.....

.....

.....

Form 13

DECISION OF FENCE-VIEWERS WHERE NO AWARD, CERTIFICATION, IS MADE

-(Subsection 14 (1) of the Act)

We, the fence-viewers of (*name of locality*), have been notified pursuant to subsection (check appropriate box)

☐ 4 (2) ☐ 11 (8) ☐ 13 (5) ☐ 13 (7)

of the Act in respect of a line fence between the lands of (name of owner against whom proceedings initiated), hereinafter referred to as Owner A, being, (description of lands sufficient to identify the property whether by municipal address or otherwise), and the lands of (name of owner who initiated the proceedings), hereinafter referred to as Owner B, being, (description of lands sufficient to identify the property whether by municipal address or otherwise), and having attended to the said lands have decided that no (check appropriate box)

☐ award ☐ certificate ☐ determination with directions

shall be made for the following reasons: (briefly but clearly state reasons for decision)

.....

.....

.....

The costs of the proceeding are fixed and determined as follows:

Item	Amount
Fence-viewers' fees for this attendance	.....
Administrative fees fixed by by-law under subsection 17 (1) of the Act	.....
Total costs	_____

Owner A shall pay ..... % of the costs of this proceeding, namely, $ .....

Owner B shall pay ..... % of the costs of this proceeding, namely, $ .....

Payments shall be made to.....

(Name of municipality in which lands subject to the award are situate)

Dated the ..... day of ..... , 19.....

Signature of Witness

.....

Signature of Fence-Viewers

.....

.....

.....

Form 14
AGREEMENT -(Section 16 of the Act)

I, (*name of owner*), being the owner of .....
(description of lands sufficient for registration in the appropriate Land Registry Office)

and I (*name of adjoining owner*) being the owner of ..... ,
(description of lands sufficient for registration in the appropriate Land Registry Office)

do agree that:

Check Appropriate Box

1. ☐ A fence to mark the boundary line between the adjoining lands described above shall be constructed, maintained and kept up.

or

☐ The fence marking the boundary line between the adjoining lands described above shall be (*insert 'repaired' or 'reconstructed' - whichever is applicable*), maintained and kept up.

Complete (a) or (b) whichever is applicable

2. (a) ..... shall be responsible for that part of the line that commences at (*description of point*) and ends at (*description of point*) and ..... for that part of the line that commences at (*description of point*) and ends at (*description of point*)

or

(b) (*Name of owner responsible for entire fence*) shall be responsible for all works connected with the above and shall be paid .....% of the costs of such works by ..... upon notification of such costs given in accordance with the Line Fences Act.

3. The fence shall be of the following description (*state the kind of fence, height, material, etc.*)

4. The work shall be commenced not later than the ..... day of ....., 19 ..... , and shall be completed not later than the ..... day of ..... , 19 .....

Dated the ..... day of ..... , 19 .....

Signature of Witness

.....

Signature of Parties

.....

.....

.....

Form 15

AGREEMENT (WHERE ONE PARTY IS A MUNICIPALITY OR LOCAL BOARD) -(Subsection 23 (3) of the Act)

.....

(name of Municipality or Local Board)

being the owner of ..... ,

(description of lands sufficient for registration in the appropriate Land Registry Office)

and I .....

(name of the adjoining owner)

being the owner of ..... ,

(description of lands sufficient for registration in the appropriate Land Registry Office)

do agree that:

Check Appropriate Box

1. ☐ A fence to mark the boundary line between the adjoining lands described above shall be constructed, maintained and kept up.

or

☐ The fence marking the boundary line between the adjoining lands described above shall be (*insert 'repaired' or 'reconstructed' - whichever is applicable*), maintained and kept up.

Complete (a) or (b) whichever is applicable

2. (a) .....

(name of Municipality or Local Board)

shall be responsible for that part of the line that commences at .....

(description of point)

and ends at .....

(description of point)

and .....

(name of the adjoining owner)

for that part of the line that commences at .....

(description of point)

and ends at .....
(description of point)

or

(b) ..... shall be responsible for all works connected with the above and shall
(*Name of owner responsible for entire fence*)
be paid .....% of the costs of such works by ..... upon notification of such costs given in accordance with the *Line Fences Act*.

3. The fence shall be of the following description (*state the kind of fence, height, material, etc.*)
.....
.....

4. The work shall be commenced not later than the ..... day of ....., 19 ..... , and shall be completed not later than the ..... day of ..... , 19 .....

Dated the ..... day of ..... , 19 .....

Signature of Witness

.....

* Affix corporate seal if body has a corporate seal

Signature of Parties

*(Name of Municipality or Local Board mentioned above)

per .....

.....

.....

(Signature of other Party)

Appendix 1: Information on the Line Fences Act

What is the Purpose of the Act?

The position of fence-viewer was created in 1793 by the first Provincial Parliament of Upper Canada. The first statute dealing with line fences was enacted in 1834. It was revised extensively in 1874 and 1913, and then appeared in substantially the same form until 1979, when it was again revised extensively by the Ontario Legislature. The Act was further amended in 1986, when the current appeal procedure was established.

The Act establishes the principle that if an owner wants a fence to mark the boundary between his or her property and the property of an adjoining owner, that owner is entitled to construct a "line fence" on the boundary. If, however, neither owner wants a line fence, no fence is necessary.

The basic purpose of the Act is to provide a local arbitration procedure between adjoining owners where one wants to construct, reconstruct or repair a fence on their common boundary, but is unable to reach agreement with the other owner on:

- the type of fence;
- the sharing of the costs of the fencing work; or
- both of these issues.

The arbitration procedure established in the Line Fences Act applies to fencing disputes where the property of one or both adjoining owners is located in a municipality. Regulation 716, made under the Line Fences Act, establishes a similar arbitration procedure where the property of both adjoining owners is located in territory without municipal organization.

To What Lands is the Act Applicable?

The Act is applicable to virtually all privately-owned lands in Ontario and to lands owned by the province and by municipalities except for:

- Ontario Crown lands that have never been patented; and
- provincial and municipal public highways.

The Act is also applicable to lands owned by local boards, including school boards and conservation authorities.

It is not applicable to lands owned by the Government of Canada and its agencies, including Indian Reserves, or by railway companies.

The Act, other than the provisions dealing with former rail lines, is not applicable to lands in municipalities with bylaws that determine how the costs of line fences are to be apportioned between adjoining owners.

Who Administers the Arbitration Procedure?

The clerk of the local municipality in which the lands are located is responsible for administering the arbitration procedure, although this responsibility can be delegated to another staff member.

Each local municipal council is required to appoint a sufficient number of fence-viewers to carry out the provisions of the Act. This can be done at the start of a term of office, the start of each year, or when an owner applies to have a fencing dispute arbitrated.

The council is also required to set the remuneration that is to be paid to the fence-viewers when they arbitrate a fencing disagreement by conducting a viewing. This can be an hourly, daily or per viewing rate.

How is the Procedure Initiated?

If two adjoining owners are unable to reach agreement on the construction, reconstruction or repair of a line fence, either owner may initiate the arbitration procedure by submitting an application to the municipality. The Act makes it mandatory for an applicant to fill out Form 1, which includes a description of the boundary between the two properties. It should be noted that a tenant is not eligible to submit an application.

Before submitting an application, an owner who wants to initiate the arbitration procedure should:

- attempt to reach agreement with the adjoining owner;
- discuss the matter informally with municipal staff in an attempt to have the dispute resolved without the need for a formal viewing;
- make certain that the Act is applicable to both properties; and
- ensure that the boundary between the two properties is not in dispute. (If it is, the municipality has no role to play).

When an application is submitted, the municipality is required to schedule a viewing by three of the municipality's fence-viewers, which must be not more than 30 days from the date that the application was received. (Municipal councils may, however, pass bylaws prohibiting the scheduling of viewings between November 1st and March 31st.)

The municipality is required to provide notice of the date and time of the viewing, at least one full week in advance, to both owners and to the three fence-viewers.

How is a Decision Made on a Fencing Dispute?

At the viewing, the three fence-viewers are required to examine the premises and to hear from both owners and their witnesses, if any.

In developing their decision, the fence-viewers are required to consider:

- the needs of both owners;
- the nature of the terrain;
- the benefit to both owners of having their boundary marked by a fence;
- the nature of other fences in the locality; and
- any other relevant factors.

After the viewing, the fence-viewers make an award specifying either:

- that each owner is to construct, reconstruct or repair half of the fence; or
- that one owner is to construct, reconstruct or repair the entire fence, with the other paying half of the costs incurred in doing this work.

If, however, the fence-viewers consider an equal division of responsibility unjust in the circumstances, they may

divide responsibility for the work between the two owners in whatever manner they consider appropriate.

It should be noted that, if one of the adjoining properties is owned by the province, the fence-viewers may not make the province responsible for more than 50 per cent of the work in their award.

The award provides a description of the work that is to be done, including the materials to be used. If there is a bylaw regulating fences in the municipality, the description in the award must conform to this bylaw.

The award also establishes dates by which the work is to be started and completed, and specifies how the costs of the proceedings, (i.e. the fees of the fence-viewers and the municipality's administrative costs) are to be divided between the two owners.

An owner who is dissatisfied with an award can appeal it within 15 days of receiving a certified copy of the award from the municipality. The owner appealing the award is required to serve a notice of appeal on the other owner and to file a copy of this notice, together with an affidavit of service, with the municipality. The appeal is then heard in the municipal office by a provincially-appointed referee or deputy referee, whose decision is final.

How Can an Award Be Enforced?

If one owner (Owner B) does not do the work specified in the award, the other owner (Owner A) may, after giving Owner B two weeks' notice, do or complete the work. Owner A is entitled to enter onto the property of Owner B to the extent necessary to do this. The Act makes it an offence for Owner B to obstruct Owner A from entering the property in this case.

The enforcement procedure is different if both Owner A and Owner B do the work specified in an award, but Owner A claims that the work done by Owner B does not comply with the award. In this situation, Owner A, after giving Owner B two weeks' notice, may request the municipality to have the fence-viewers reconvene to determine whether the work done by Owner B complies with the award. If the fence-viewers decide that it does not, they will then direct Owner B to take appropriate action by a certain date to make the work comply. If Owner B does not obey the fence-viewers' directions, Owner A may, after giving Owner B a further two weeks' notice, do or complete the work directed by the fence-viewers in the same manner as in the situation described immediately above.

How Can One Owner Recover the Amount Owed By the Other Owner?

Once Owner A has done or completed the work in either of the two situations described immediately above, he or she may then apply to have the fence-viewers reconvene to review the completed work.

The procedure is somewhat different where an award requires Owner A to do all of the work specified in the award, with Owner B paying a portion of the cost of the work to Owner A. If Owner B fails to pay this amount, Owner A, after giving 28 days' notice to Owner B, may apply to have the fence-viewers reconvene to review the completed work.

The fence-viewers reconvene at the lands of the two owners to examine the work done by Owner A and, if satisfied, prepare a certificate of default certifying the amount of money that is owed by Owner B to Owner A.

Owner A can then recover this amount by depositing the certificate of default with the municipality. The amount is then placed on the collector's roll and collected from Owner B in the same manner as municipal taxes, together with interest. Owner A receives this amount, with interest, when Owner B pays the municipal taxes. The municipal treasurer can pay the amount set out in the certificate to Owner A immediately if the municipal council has passed a bylaw to authorize this.

Alternatively, Owner A may recover the amount owed by Owner B by filing certified copies of the certificate and of the fence-viewers' award with the clerk of the Small Claims Court.

When filed, the amount may then be levied against the goods, chattels and land of Owner B in the same manner as a judgement of the Small Claims Court.

Can an Award be Registered on Title?

Either owner may register a certified copy of a fence-viewers' award or of a certificate of default in the proper land registry office.The award and certificate of default then become charges upon the land affected by them. An agreement between two adjoining owners may also be registered and enforced as if it were a fence-viewers' award.

How can Further Information be Obtained about the Act?

To obtain more information, please contact your local municipality or one of the following Municipal Services Offices of the Ministry of Municipal Affairs and Housing listed in Appendix 2.

Appendix 2: Municipal Services Offices - Contact Information

Ministry of Municipal Affairs & Housing Municipal Services Offices (MSO)

MSO - Central
777 Bay Street, 2nd Floor
Toronto, ON M5G 2E5
General Inquiry: 416.585.6226
Toll Free # 1.800.668.0230

MSO - Northeastern
159 Cedar Street, Suite 401
Sudbury, ON P3E 6A5
General Inquiry: 705.564.0120
Toll Free # 1.800.461.1193

MSO - Eastern
8 Estate Lane
Rockwood House
Kingston, ON K7M 9A8
General Inquiry: 613.548.4304
Toll Free # 1.800.267.9438

MSO - Northwestern
435 James St. S., Suite 223
Thunder Bay, ON P7E 6S7
General Inquiry: 807.475.1651
Toll Free # 1.800.465.5027

MSO - Southwestern
659 Exeter Road, 2nd Floor
London, ON N6E 1L3
General Inquiry: 519.873.4020
Toll Free # 1.800.265.4736